This document is scheduled to be published in the
Federal Register on 08/11/2017 and available online at
https://federalregister.gov/d/2017-15764, and on FDsys.gov

BILLING CODE: 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB-2016-0038]

RIN 3170-AA61

Amendments to Federal Mortgage Disclosure Requirements under the Truth in Lending Act (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is modifying the Federal mortgage disclosure requirements under the Real Estate Settlement Procedures Act and the Truth in Lending Act that are implemented in Regulation Z. This rule memorializes the Bureau's informal guidance on various issues and makes additional clarifications and technical amendments. This rule also creates tolerances for the total of payments, adjusts a partial exemption mainly affecting housing finance agencies and nonprofits, extends coverage of the TILA-RESPA integrated disclosure (integrated disclosure) requirements to all cooperative units, and provides guidance on sharing the integrated disclosures with various parties involved in the mortgage origination process.

DATES: The final rule is effective October 10, 2017. However, the mandatory compliance date is October 1, 2018. For additional discussion of these dates, see part VI of the **SUPPLEMENTARY INFORMATION** section below.

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SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

For more than 30 years, Federal law required lenders to issue two overlapping sets of disclosures to consumers applying for a mortgage. In October 2015, integrated disclosures issued by the Consumer Financial Protection Bureau, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, took effect.[1] The Bureau has worked actively to support implementation both before and after the effective date by providing compliance guides, webinars, and other implementation aids. To further these ongoing efforts, on July 28, 2016, the Bureau proposed amendments to the integrated disclosure requirements in Regulation Z (the proposal).[2]

The Bureau is now issuing this final rule to memorialize certain past informal guidance, whether provided through webinar, compliance guide, or otherwise, and make additional clarifications and technical amendments. This final rule also makes a limited number of additional substantive changes where the Bureau has identified discrete solutions to specific implementation challenges. Specifically, among other changes, the final rule:

- *Creates tolerances for the total of payments*. The Truth in Lending Act (TILA) establishes certain tolerances for accuracy in calculating the finance charge and

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376, 2007, 2103-04, 2107-09 (2010); Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 78 FR 79730 (Dec. 31, 2013).
[2] The proposal was published in the *Federal Register* on August 15, 2016. See 81 FR 54317 (Aug. 15, 2016).

disclosures affected by the finance charge. In light of prior changes to certain underlying regulatory definitions, the final rule establishes express tolerances for the total of payments to parallel the existing provisions regarding the finance charge.

- *Adjusts a partial exemption that mainly affects housing finance agencies and nonprofits*. The existing rule provides a partial exemption from the integrated disclosure requirements for certain non-interest bearing subordinate lien transactions that provide down payment and other homeowner assistance (housing assistance loans). The Bureau has learned that the exemption may not be operating as intended. The final rule includes two amendments to expand the scope of the partial exemption and provide additional flexibility when loans satisfy the partial exemption.
- *Provides a uniform rule regarding application of the integrated disclosure requirements to cooperative units*. Under the existing rule, coverage of cooperative units depends on whether cooperatives are classified as real property under State law. Because State law sometimes treats cooperatives differently for different purposes, there may be uncertainty and potential inconsistency among market actors regarding coverage of the integrated disclosure requirements. The final rule requires provision of the integrated disclosures in transactions involving cooperative units, whether or not cooperatives are classified under State law as real property.
- *Provides guidance on sharing disclosures with various parties involved in the mortgage origination process*. The Bureau has received a number of requests for

guidance concerning the sharing of the integrated disclosures with sellers and various other parties involved in the origination process, including real estate agents, in light of privacy concerns. The final rule incorporates and expands upon previous webinar guidance in the Official Interpretations (commentary) to the regulation to provide greater clarity.

The clarifications and technical corrections in this final rule address a variety of topics, including: affiliate charges; the calculating cash to close table; construction loans; decimal places and rounding; escrow account disclosures; escrow cancellation notices; expiration dates for the closing costs disclosed on the Loan Estimate; gift funds; the "In 5 Years" calculation; lender and seller credits; lenders' and settlement agents' respective responsibilities; the list of service providers; non-obligor consumers; partial payment policy disclosures; payment ranges on the projected payments table; the payoffs and payments table; payoffs with a purchase loan; post-consummation fees; principal reduction (principal curtailment); disclosure and good-faith determination of property taxes and property value; rate locks; recording fees; simultaneous second lien loans; the summaries of transactions table; the total interest percentage calculation; trusts; and informational updates to the Loan Estimate. This final rule will generally benefit consumers and industry alike by providing greater clarity for implementation going forward. As stated in the proposal, the Bureau did not reopen any major policy decisions with this rulemaking.

For the reasons discussed in the section-by-section analysis of § 1026.19(e)(4)(ii) below, the Bureau is not finalizing proposed comment 19(e)(4)(ii)-2, which related to comparing charges paid by or imposed on the consumer to charges disclosed on a corrected Closing

Disclosure to determine if an estimated charge was disclosed in good faith. The Bureau is issuing a new proposal, concurrent with this final rule, that would address this issue.

II. Background

A. The TILA-RESPA Integrated Disclosures Rulemaking

For more than 30 years, TILA required creditors to give consumers who applied for consumer credit, including mortgage loans, one set of disclosures, while the Real Estate Settlement Procedures Act (RESPA) required settlement agents to give borrowers who obtained federally related mortgage loans a different, overlapping, set of disclosures. This duplication was long recognized as inefficient and unduly complex for both consumers and industry and fueled more than one effort over the years to develop combined disclosure forms. In 1998, the Board of Governors of the Federal Reserve System (the Board) and the Department of Housing and Urban Development (HUD) prepared a joint report as to how the two sets of disclosures could be streamlined and simplified.[3]

In Dodd-Frank Act sections 1032(f), 1098, and 1100A, Congress directed the Bureau to integrate the mortgage loan disclosures under TILA and RESPA.[4] The Bureau issued proposed integrated disclosure forms and rules for comment on July 9, 2012 (the 2012 TILA-RESPA Proposal),[5] and on November 20, 2013, the Bureau issued a final rule titled "Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the

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[3] Bd. of Governors of the Fed. Reserve Sys. & U.S. Dep't. of Housing and Urban Dev., Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act (1998), available at https://www.federalreserve.gov/boarddocs/rptcongress/tila.pdf. The report was prepared at Congress's direction in the Economic Growth and Regulatory Paperwork Reduction Act of 1996. Public Law 104-208, § 2101, 110 Stat. 3009.

[4] Public Law 111-203, 124 Stat. 1376, 2007, 2103-04, 2107-09 (2010).

[5] 77 FR 51116 (Aug. 23, 2012).

Truth in Lending Act (Regulation Z)" (TILA-RESPA Final Rule).[6] The rule included a number of model forms, 13 samples illustrating the use of those forms for different types of loans, and extensive Official Interpretations, which provided authoritative guidance explaining the new disclosures. The Bureau used its discretion to establish an initial effective date of August 1, 2015, slightly more than 20 months after the rule itself was issued.[7] The Bureau ultimately extended that effective date another two months, to October 3, 2015, in a subsequent rulemaking.[8] The Bureau has reaffirmed continuously its commitment to support a smooth transition for the mortgage market, including its commitment to be sensitive to the good faith efforts made by institutions to come into compliance.[9]

The Bureau has made technical corrections to the TILA-RESPA Final Rule. On January 20, 2015, the Bureau issued the "Amendments to the 2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) and the 2013 Loan Originator Rule Under the Truth in Lending Act (Regulation Z)" final rule (January 2015 Amendments).[10] On July 21, 2015, the Bureau issued the "2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act

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[6] 78 FR 79730 (Dec. 31, 2013).

[7] Most commenters supported an implementation period between 18 and 24 months. 78 FR 79730, 80071 (Dec. 31, 2013).

[8] 80 FR 43911 (July 24, 2015). An administrative error on the Bureau's part required the Bureau to extend the effective date to August 15, 2015, at the earliest. The Bureau extended the effective date an additional six weeks to minimize costs from the delay to both consumers and industry.

[9] *See, e.g.*, Letter from Director Richard Cordray, CFPB, to Industry Trades (April 28, 2015); Letter from Director Richard Cordray, CFPB, to Representatives Andy Barr and Carolyn B. Maloney, U.S. House of Representatives (June 3, 2015). Both Fannie Mae and Freddie Mac have issued statements indicating that they are not conducting routine post-purchase reviews during the transitional period after the effective date. *See, e.g.*, Fannie Mae, Lender Letter LL-2015-06 (Oct. 6, 2015), *available at* https://www.fanniemae.com/content/announcement/ll1506.pdf; Freddie Mac, Industry Letter (Oct. 6, 2015), *available at* http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/iltr100615.pdf.

[10] 80 FR 8767 (Feb. 19, 2015). The January 2015 Amendments finalized a proposal the Bureau had issued on October 10, 2014, 79 FR 64336 (Oct. 29, 2014).

(Regulation X) and the Truth in Lending Act (Regulation Z) and Amendments; Delay of Effective Date" final rule (July 2015 Amendments), which made certain technical amendments as well as extending the effective date.[11] The TILA-RESPA Final Rule, January 2015 Amendments, and July 2015 Amendments are collectively referred to as the TILA-RESPA Rule in this final rule.

B. Implementation Support

The Bureau has engaged in extensive efforts to support industry implementation of the TILA-RESPA Rule. Information regarding the Bureau's implementation support initiative and available implementation resources can be found on the Bureau's regulatory implementation website at www.consumerfinance.gov/regulatory-implementation/tila-respa. The Bureau's ongoing efforts in this area include: (1) the publication of a small entity compliance guide and a guide to forms to help industry understand the new rules, including updates to the guides, as needed; (2) the publication of a readiness guide for institutions to evaluate their readiness and facilitate compliance with the new rules; (3) the publication of a disclosure timeline that illustrates the process and timing requirements of the new disclosure rules; (4) the publication of the Bureau's own examination procedures, incorporating the Federal Financial Institutions Examination Council's exam procedures; (5) the publication of Loan Estimate and Closing Disclosure forms with fields annotated to show certain TILA disclosure citations; (6) a series of webinars to address common interpretive questions, including an index of questions answered during those webinars; (7) the issuance of the January 2015 and July 2015 Amendments, as well

[11] 80 FR 43911 (July 24, 2015). The July 2015 Amendments finalized a proposal the Bureau had issued on June 24, 2015, 80 FR 36727 (June 26, 2015).

as a February 2016 Federal Register erratum notice; (8) the creation of web pages targeted to real estate professionals and settlements service providers and their questions; (9) roundtable meetings with industry, including creditors, settlement service providers, technology vendors, and secondary market participants, to discuss their challenges and support their implementation efforts; (10) participation in numerous conferences and forums throughout the entire implementation period; (11) close collaboration with State and Federal regulators on implementation of the TILA-RESPA Final Rule, including coordination on consistent examination procedures; and (12) extensive informal guidance to support implementation of the TILA-RESPA Rule.

C. Purpose and Scope of Final Rule

This final rule memorializes some of the Bureau's existing informal guidance, whether provided through webinar, compliance guide, or otherwise, and makes additional clarifications and technical amendments. This final rule also makes a limited number of additional substantive changes where the Bureau has identified discrete solutions to specific implementation challenges.

The Bureau's focus in this rulemaking is providing additional clarity to facilitate compliance. The Bureau did not reopen any major policy decisions with this rulemaking. As stated in the proposal, the Bureau was reluctant to entertain major changes that could involve substantial reprogramming of systems so soon after the TILA-RESPA Final Rule's October 2015 effective date or to otherwise distract from industry's efforts to resolve outstanding implementation issues.

Accordingly, the final rule does not and cannot address every concern that has been raised to the Bureau. The Bureau believes that industry has made substantial implementation

progress. The Bureau is prioritizing its resources to further facilitate industry's implementation progress. This final rule does not contain any revisions that implicate fundamental policy choices, such as the disclosure of simultaneous issuance title insurance premiums, made in the TILA-RESPA Final Rule. This final rule also does not include additional cure provisions.

As stated in the proposal, the Bureau has spent substantial time considering industry requests to define further procedures for curing errors made in Loan Estimates or Closing Disclosures. The Bureau has worked steadily with industry to explain the cure provisions adopted in the TILA-RESPA Final Rule as well as TILA's existing provisions for cure. The Bureau is concerned that further definition of cure provisions would not be practicable without substantially undermining incentives for compliance with the rule. The Bureau believes that further defining cure provisions would be extraordinarily complex. Accordingly, the Bureau focused this rulemaking process on facilitating compliance with the TILA-RESPA Rule so that industry is able to provide all consumers with disclosures that conform to the requirements of the rule.

III. Comments

The Bureau issued the proposal on July 28, 2016, and it was published in the *Federal Register* on August 15, 2016.[12] The comment period closed on October 18, 2016. In response to the proposal, the Bureau received more than 1,600 comments from trade associations, creditors, technology vendors, and other industry representatives, as well as consumer groups, government sponsored enterprises (GSEs), and others. As discussed in more detail below, the Bureau has considered comments in adopting this final rule.

[12] 81 FR 54317 (Aug. 15, 2016).

IV. Legal Authority

The Bureau is issuing this final rule pursuant to its authority under TILA, RESPA, and the Dodd-Frank Act, including the authorities discussed below. In general, the provisions this final rule amends were previously adopted by the Bureau in the TILA-RESPA Rule. In doing so, the Bureau relied on one or more of the authorities discussed below, as well as other authority. Except as otherwise noted in the section-by-section analysis in part V below, the Bureau is issuing this final rule in reliance on the same authority and for the same reasons relied on in adopting the relevant provisions of the TILA-RESPA Rule, as discussed in detail in the Legal Authority and Section-by-Section Analysis parts of the TILA-RESPA Final Rule and January 2015 Amendments, respectively.[13]

A. The Integrated Disclosure Mandate

Section 1032(f) of the Dodd-Frank Act required the Bureau to propose, for public comment, rules and model disclosures combining the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Bureau determined that any proposal issued by the Board and HUD carried out the same purpose.[14] In addition, the Dodd-Frank Act amended section 105(b) of TILA and section 4(a) of RESPA to require the integration of the TILA disclosures and the disclosures required by sections 4 and 5 of RESPA.[15] The purpose of the integrated disclosure is

[13] 78 FR 79730, 79753-56 (Dec. 31, 2013); 80 FR 8767, 8768-70 (Feb. 19, 2015).
[14] Public Law 111-203, 124 Stat. 1376, 2007 (2010) (codified at 12 U.S.C. 5532(f)).
[15] Section 1100A of the Dodd-Frank Act amended TILA section 105(b) to provide that the "Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this title in conjunction with the disclosure requirements of the Real Estate Settlement Procedures Act of 1974 that, taken together, may apply to a transaction that is subject to both or either provisions of law." Public Law 111-203, 124 Stat. 1376, 2108 (2010) (codified at 15 U.S.C. 1604(b)). Section 1098

to facilitate compliance with the disclosure requirements of TILA and RESPA and to improve borrower understanding of the transaction.

Although Congress imposed the requirement to integrate the disclosures, it did not harmonize the underlying statutes. TILA and RESPA establish different timing requirements for disclosing mortgage credit terms and costs to consumers and require that those disclosures be provided by different parties. TILA section 128(b)(2)(A) generally requires that, within three business days of receiving the consumer's application and at least seven business days before consummation of certain mortgage transactions, creditors must provide consumers a good faith estimate of the costs of credit.[16] If the annual percentage rate that was initially disclosed becomes inaccurate, TILA section 128(b)(2)(D) requires creditors to redisclose the information at least three business days before consummation.[17] Pursuant to TILA section 128(b)(2)(B)(ii), the disclosures must be provided in final form at consummation.[18] RESPA section 5(c) also requires that the lender or broker provide borrowers with a good faith estimate of settlement charges no later than three business days after receiving their applications.[19] However, unlike TILA, RESPA section 4(b) requires that, at or before settlement, the person conducting the

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of the Dodd-Frank amended RESPA section 4(a) to require the Bureau to publish a "single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this section and section 5, in conjunction with the disclosure requirements of the Truth in Lending Act that, taken together, may apply to a transaction that is subject to both or either provisions of law." Public Law 111-203, 124 Stat. 1376, 2103 (2010) (codified at 12 U.S.C. 2603(a)).

[16] 15 U.S.C. 1638(b)(2)(A). This requirement applies to extensions of credit that are both secured by a dwelling and subject to RESPA. *Id*.

[17] 15 U.S.C. 1638(b)(2)(D).

[18] 15 U.S.C. 1638(b)(2)(B)(ii).

[19] 12 U.S.C. 2604(c).

settlement (which may or may not be the creditor) provide the borrower with a statement that records all charges imposed upon the borrower in connection with the settlement.[20]

B. Other Rulemaking and Exception Authorities

Truth in Lending Act

TILA section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a),[21] directs the Bureau to prescribe regulations to carry out the purposes of TILA and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions and may further provide for such adjustments and exceptions for all or any class of transactions that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. A purpose of TILA is to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various available credit terms and avoid the uninformed use of credit.[22] In enacting TILA, Congress found that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit.[23] Strengthened competition among financial institutions is a goal of TILA, achieved through the meaningful disclosure of credit terms.

Historically, TILA section 105(a) has served as a broad source of authority for rules that promote the informed use of credit through required disclosures and substantive regulation of certain practices. Dodd-Frank Act section 1100A amended TILA section 105(a) to provide the

[20] 12 U.S.C. 2603(b).
[21] 15 U.S.C. 1604(a).
[22] 15 U.S.C. 1601(a).
[23] *Id.*

Bureau express authority to prescribe regulations that contain additional requirements that the Bureau finds are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. This amendment clarified the Bureau's authority under TILA section 105(a) to prescribe requirements beyond those specifically listed in the statute. The Dodd-Frank Act also clarified the Bureau's rulemaking authority over certain high-cost mortgages pursuant to section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a) authority to make adjustments and exceptions to the requirements of TILA applies to all transactions subject to TILA, including the high-cost mortgages referred to in TILA section 103(bb), except with respect to the provisions of TILA section 129 that apply uniquely to such high-cost mortgages.[24]

TILA section 129B(e). Dodd-Frank Act section 1405(a) amended TILA to add new section 129B(e).[25] That section authorizes the Bureau to prohibit or condition terms, acts, or practices relating to residential mortgage loans that the Bureau finds to be abusive, unfair, deceptive, predatory, necessary, or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of sections 129B and 129C of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections, or are not in the interest of the borrower. In developing rules under TILA section 129B(e), the Bureau has considered whether the rules are in the interest of the borrower, as required by the statute. The Bureau is issuing portions of this final rule pursuant to its authority under TILA section 129B(e).

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[24] 15 U.S.C. 1639. TILA section 129 contains requirements for certain high-cost mortgages, established by the Home Ownership and Equity Protection Act (HOEPA), which are commonly called HOEPA loans.
[25] Public Law 111-203, 124 Stat. 1376, 2141 (2010) (codified at 15 U.S.C. 1639B(e)).

Real Estate Settlement Procedures Act

RESPA section 19(a). Section 19(a) of RESPA authorizes the Bureau to prescribe such rules and regulations and to make such interpretations and grant such reasonable exemptions for classes of transactions as may be necessary to achieve the purposes of RESPA.[26] One purpose of RESPA is to effect certain changes in the settlement process for residential real estate that will result in more effective advance disclosure to home buyers and sellers of settlement costs.[27] In addition, in enacting RESPA, Congress found that consumers are entitled to greater and more timely information on the nature and costs of the settlement process and to be protected from unnecessarily high settlement charges caused by certain abusive practices in some areas of the country.[28] In the past, RESPA section 19(a) has served as a broad source of authority to prescribe disclosures and substantive requirements to carry out the purposes of RESPA.

In developing rules under RESPA section 19(a), the Bureau has considered the purposes of RESPA, including to effect certain changes in the settlement process that will result in more effective advance disclosure of settlement costs. The Bureau is issuing portions of this final rule pursuant to its authority under RESPA section 19(a).

Dodd-Frank Act

Dodd-Frank Act section 1022(b). Under Dodd-Frank Act section 1022(b)(1), the Bureau has general authority to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws

[26] 12 U.S.C. 2617(a).
[27] 12 U.S.C. 2601(b).
[28] 12 U.S.C. 2601(a).

and to prevent evasions thereof.[29] TILA and RESPA are Federal consumer financial laws.[30] Accordingly, in issuing this rule, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b) to prescribe rules under TILA, RESPA, and title X of the Dodd-Frank Act that carry out the purposes and objectives and prevent evasion of those laws. Section 1022(b)(2) of the Dodd-Frank Act prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1).[31]

Dodd-Frank Act section 1032. Section 1032(a) of the Dodd-Frank Act provides that the Bureau may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.[32] The authority granted to the Bureau in section 1032(a) is broad and empowers the Bureau to prescribe rules regarding the disclosure of the features of consumer financial products and services generally. Accordingly, the Bureau may prescribe rules containing disclosure requirements even if other Federal consumer financial laws do not specifically require disclosure of such features.

Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to section 1032, the Bureau shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer

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[29] Public Law 111-203, 124 Stat. 1376, 1980 (2010) (codified at 15 U.S.C. 5512(b)(1)).
[30] 12 U.S.C. 5481(12) and (14).
[31] Public Law 111-203, 124 Stat. 1376, 1980 (2010) (codified at 12 U.S.C. 5512(b)(2)).
[32] Public Law 111-203, 124 Stat. 1376, 2006-07 (2010) (codified at 12 U.S.C. 5532(a)).

financial products or services.[33] Accordingly, in developing the TILA-RESPA Rule under Dodd-Frank Act section 1032(a), the Bureau considered available studies, reports, and other evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services. Moreover, the Bureau has considered the evidence developed through its consumer testing of the integrated disclosures as well as prior testing done by the Board and HUD regarding TILA and RESPA disclosures. See part III of the TILA-RESPA Final Rule for a discussion of the Bureau's consumer testing.[34] The Bureau is issuing portions of this final rule pursuant to its authority under Dodd-Frank Act section 1032(a).

Dodd-Frank Act section 1405(b). Section 1405(b) of the Dodd-Frank Act provides that, notwithstanding any other provision of title XIV of the Dodd-Frank Act, in order to improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, the Bureau may exempt from or modify disclosure requirements, in whole or in part, for any class of residential mortgage loans if the Bureau determines that such exemption or modification is in the interest of consumers and in the public interest.[35] Section 1401 of the Dodd-Frank Act, which amends TILA section 103(cc)(5), generally defines a residential mortgage loan as any consumer credit transaction that is secured by a mortgage on a dwelling or on residential real property that includes a dwelling, other than an open-end credit plan or an extension of credit secured by a consumer's interest in a timeshare plan.[36] Notably, the authority granted by section 1405(b) applies to disclosure requirements generally and is not

[33] Public Law 111-203, 124 Stat. 1376, 2007 (2010) (codified at 12 U.S.C. 5532(c)).
[34] 78 FR 79730, 79743-50 (Dec. 31, 2013).
[35] Public Law 111-203, 124 Stat. 1376, 2142 (2010) (codified at 15 U.S.C. 1601 note).
[36] Public Law 111-203, 124 Stat. 1376, 2138 (2010) (codified at 15 U.S.C. 1602(cc)(5)).

limited to a specific statute or statutes. Accordingly, Dodd-Frank Act section 1405(b) is a broad source of authority to exempt from or modify the disclosure requirements of TILA and RESPA.

In developing rules for residential mortgage loans under Dodd-Frank Act section 1405(b), the Bureau has considered the purposes of improving consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures and the interests of consumers and the public. The Bureau is issuing portions of this final rule pursuant to its authority under Dodd-Frank Act section 1405(b).

V. Section-by-Section Analysis

Section 1026.1 Authority, Purpose, Coverage, Organization, Enforcement, and Liability

1(d) Organization

1(d)(5)

As detailed in the section-by-section analysis of § 1026.19, the Bureau proposed and is now adopting conforming amendments to § 1026.1(d)(5) and comment 1(d)(5)-1 to reflect a change to the coverage of § 1026.19(e) and (f) to include closed-end credit transactions that are secured by a cooperative unit, regardless of whether a cooperative unit is treated as real property under State or other applicable law.

Current comment 1(d)(5)-1 provides in relevant part that the Bureau's revisions to Regulation X and Regulation Z in the TILA-RESPA Final Rule apply to covered loans for which the creditor or mortgage broker receives an application on or after October 3, 2015 (the "effective date"), except that § 1026.19(e)(2), § 1026.28(a)(1), and the commentary to § 1026.29 became effective on October 3, 2015, without respect to whether an application was received. In addition to the proposed revision noted above, the Bureau proposed to restructure comment 1(d)(5)-1 and make other technical revisions to enhance clarity. The Bureau also proposed

revisions to require a creditor, servicer, or covered person to provide the applicable disclosures required under § 1026.20(e) or § 1026.39(d)(5) as of October 1, 2017, regardless of when the application for a covered mortgage transaction was received. The proposed amendments to the comment also would set forth an illustrative example.

Section 1026.20(e) requires the creditor or servicer to issue an "Escrow Closing Notice" when an escrow account subject to § 1026.20(e) will be canceled. Section 1026.39(d)(5) requires a covered person[37] to disclose the lender's partial payment policy. The obligation to provide these disclosures may occur after consummation. In the proposal, the Bureau acknowledged that there is uncertainty within industry as to whether the disclosures under §§ 1026.20(e) and 1026.39(d)(5) (together, the post-consummation disclosures under §§ 1026.20(e) and 1026.39(d)(5)) apply to all covered transactions as of the effective date of October 3, 2015, or only to covered transactions for which the creditor or mortgage broker received an application on or after October 3, 2015, and explained that it considers either approach compliant under existing comment 1(d)(5)-1. The Bureau proposed to clarify that the post-consummation disclosure requirements under §§ 1026.20(e) and 1026.39(d)(5) apply to all covered transactions regardless of the date an application was received. In light of current uncertainty that may exist regarding compliance under existing comment 1(d)(5)-1, however, the Bureau proposed to provide that the requirement to issue the post-consummation disclosures under §§ 1026.20(e) and 1026.39(d)(5) applies to all covered transactions, regardless of the date an application was received, as of the proposed effective date of October 1, 2017.

[37] "A 'covered person' means any person, as defined in § 1026.2(a)(22), that becomes the owner of an existing mortgage loan by acquiring legal title to the debt obligation, whether through a purchase, assignment or other transfer, and who acquires more than one mortgage loan in any twelve-month period." § 1026.39(a)(1).

The October 1, 2017, effective date in proposed comment 1(d)(5)-1 was based on the Bureau's working assumption that a final rule would be promulgated on or before April 1, 2017. The Bureau proposed this tentative date in accordance with TILA section 105(d), which provides that any regulation of the Bureau that requires a disclosure that differs from the previously required disclosure generally shall take effect on that October 1 which follows, by at least six months, the date of promulgation. Accordingly, the Bureau noted that the effective date recited for the post-consummation disclosures under §§ 1026.20(e) and 1026.39(d)(5) in the proposal may differ in the final rule, depending on when the final rule is promulgated. As noted in the effective date discussion in part VI, below, the effective date of this final rule is 60 days from publication in the *Federal Register* but the amendments will not yet be mandatory. In general, compliance with the amendments in the final rule will only be mandatory with respect to transactions for which a creditor or mortgage broker received an application on or after October 1, 2018. Nonetheless, on and after October 1, 2018, the requirement to provide the post-consummation disclosures §§ 1026.20(e) and 1026.39(d)(5) will be mandatory for all transactions regardless of the date a corresponding loan application was received.

As stated in the proposal, the Bureau believes that consumers with covered mortgage loans would benefit from the receipt of the post-consummation disclosures under §§ 1026.20(e) and 1026.39(d)(5) without regard to when a corresponding application was received. Information about an escrow account closure or the partial payment policy contained in the post-consummation disclosures under §§ 1026.20(e) and 1026.39(d)(5) is beneficial to consumers regardless of when the consumer applied for the loan. Moreover, there is no necessary relationship between the disclosures made under § 1026.19(e) and (f) and the post-

consummation disclosures under §§ 1026.20(e) and 1026.39(d)(5); consumers should be able to understand the latter even if they have not received the former.

The Bureau also noted in its proposal that requiring the post-consummation disclosures under §§ 1026.20(e) and 1026.39(d)(5) for covered accounts without regard to the application date would simplify compliance. For example, under the final rule, creditors or servicers would not have to track the application date for certain covered transactions under §§ 1026.20(e) and 1026.39(d)(5) and, thus, requiring the disclosures under these provisions for all covered accounts regardless of application date may simplify servicers' compliance. Similarly, the post-consummation partial payment disclosure required by § 1026.39(d)(5) is incorporated into the mortgage transfer disclosures that are provided upon transfer of ownership of any covered loan, without regard to application date. If § 1026.39(d)(5) is effective without regard to application date, covered persons under § 1026.39 can provide a standard disclosure for all mortgage loans rather than two distinct disclosures, depending on the loan's application date.

The Bureau sought comment on whether applying the post-consummation disclosures under §§ 1026.20(e) and 1026.39(d)(5) to all covered transactions regardless of when an application was received is appropriate. The Bureau also sought any information about current industry practice and whether these notices are provided on all transactions that met the conditions set forth in §§ 1026.20(e) and 1026.39(d), respectively, or only on transactions for which the application was received on or after October 3, 2015. The Bureau further sought comment on how often escrow accounts are canceled post-consummation, whether the rate of escrow cancelations is expected to remain static or change, and on the burden of tracking the application date for the post-consummation disclosures under §§ 1026.20(e) and 1026.39(d)(5).

The Bureau received three comments regarding the proposed revision to comment 1(d)(5)-1 to clarify that the post-consummation disclosure requirements under §§ 1026.20(e) and 1026.39(d)(5) apply to all covered accounts regardless of the date an application was received. All the commenters supported this proposed revision. The Bureau did not receive comments regarding the restructuring of comment 1(d)(5)-1 or the conforming amendments to § 1026.1(d)(5) and comment 1(d)(5)-1 to reflect a change to the coverage of § 1026.19(e) and (f) to include closed-end credit transactions that are secured by a cooperative unit, regardless of whether a cooperative unit is treated as real property under State or other applicable law. For the reasons discussed above the Bureau is finalizing comment 1(d)(5)-1 substantially as proposed, but with revisions to reflect the date of October 1, 2018, instead of October 1, 2017, and to make other clarifying edits.

In addition, as discussed above and in more detail in the effective date discussion in part VI, below, the Bureau is establishing an effective date, optional compliance period, and mandatory compliance date for this final rule. The Bureau is adding new comment 1(d)(5)-2 in order to memorialize the effective date, the optional compliance period, and the mandatory compliance date.

Section 1026.2 Definitions and Rules of Construction

2(a) Definitions

2(a)(11) Consumer

Comments 2(a)(11)-3 and 3(a)-10 discuss when the extension of credit to trusts is covered by TILA. The Bureau proposed to amend comment 2(a)(11)-3 to clarify that, in addition to credit extended to land trusts, credit extended to trusts established for taxation or

estate planning purposes would also be considered to be extended to a natural person for purposes of the definition of consumer in § 1026.2(a)(11), consistent with comment 3(a)-10.

Several industry commenters supported the clarification in proposed comment 2(a)(11)-3. Industry commenters also requested clarification as to who should receive disclosures and how consumers' names should be disclosed, including on the optional signature lines under §§ 1026.37(n) and 1026.38(s), where credit is extended to trusts established for tax or estate planning purposes. A title insurance underwriter recommended that proposed comment 2(a)(11)-3 become effective as soon as possible or even retroactively, while a vendor group stated that reprogramming for some vendors could take up to six months.

The Bureau is adopting comment 2(a)(11)-3 substantially as proposed but with a minor change. Specifically, comment 2(a)(11)-3, as finalized, uses the phrase "tax or estate planning purposes" (rather than the phrase "taxation or estate planning purposes") for consistency with comment 3(a)-10.

Guidance as to who should receive disclosures where credit is extended to trusts established for tax or estate planning purposes can be found in current §§ 1026.2(a)(22) and 1026.17(d) and their associated commentary. Comment 2(a)(22)-3 provides that a trust and its trustee are considered to be the same person for purposes of Regulation Z, and comment 17(d)-2 provides that disclosures must be given to the principal debtor and, if two consumers are joint obligors with primary liability on an obligation, the disclosures may be given to either one of them. Thus, where credit is extended to trusts established for tax or estate planning purposes, the disclosures may simply be provided to the trustee on behalf of the trust. In rescindable transactions, however, comment 17(d)-2 provides that the disclosures required by § 1026.19(f) must be given separately to each consumer who has the right to rescind under § 1026.23.

Current comment 37(a)(5)-1 provides guidance on how consumers' names should be disclosed on the Loan Estimate. If there is more than one consumer applying for the credit, § 1026.37(a)(5) requires disclosure of the name and the mailing address of each consumer to whom the Loan Estimate will be delivered. Pursuant to current comment 17(d)-2, as noted above, where credit is extended to trusts established for tax or estate planning purposes, the disclosures may simply be provided to the trustee on behalf of the trust. Therefore, to comply with § 1026.37(a)(5), a creditor may opt to disclose the name and mailing address of the trust only, although nothing prohibits the creditor from additionally disclosing, pursuant to § 1026.37(a)(5), the names of the trustee or of other consumers applying for the credit. Regarding the Closing Disclosure, current § 1026.38(a)(4) and its associated commentary provide that creditors must disclose the name and address of each consumer and seller in the transaction. The section-by-section analysis of § 1026.38(a)(4) below includes a discussion of the definition of consumer for purposes of such disclosure.

Current §§ 1026.37(n) and 1026.38(s) and their associated commentary permit a creditor to determine in its sole discretion whether or not to include a signature line or insert the consumer's name under the signature line rather than the designation "Applicant" or "Co-Applicant." When credit is extended to trusts established for tax or estate planning purposes and the creditor opts to insert a signature line, nothing in the TILA-RESPA Rule prohibits the creditor from inserting the trustee's name under the signature line along with a designation that the trustee is serving in its capacity as trustee.

In response to comments regarding the effective date and implementation period, as discussed in part VI below, the rule will be effective 60 days from publication in the *Federal Register*, but there will be an optional compliance period in effect until October 1, 2018.

Section 1026.3 Exempt Transactions

3(h) Partial Exemption for Certain Mortgage Loans

The Bureau's Proposal

Section 1026.3(h) currently provides that the TILA-RESPA integrated disclosure requirements do not apply to transactions that satisfy six criteria that are associated with certain housing assistance loans for low- and moderate-income consumers. If the six criteria in § 1026.3(h) are satisfied, a creditor is not required to provide the Loan Estimate, Closing Disclosure, or special information booklet in connection with the mortgage loan. The creditor must, however, provide the disclosures required by § 1026.18, ensuring that the consumer receives TILA disclosures of the cost of credit. Thus, § 1026.3(h) provides an exemption from certain Regulation Z disclosure requirements, though it does not provide a full exemption from Regulation Z. In addition, Regulation X § 1024.5(d) provides a partial exemption from certain RESPA disclosure requirements for federally related mortgage loans.[38] Regulation X § 1024.5(d)(2) cross-references the exemption criteria set forth in § 1026.3(h). The partial exemption in § 1026.3(h) and the parallel partial exemption in Regulation X § 1024.5(d)(2) replaced a disclosure exemption previously granted by HUD. The purpose of these partial exemptions is to facilitate access to certain low-cost, non-interest bearing, subordinate-lien transactions by streamlining the disclosures required in connection with these loans.

As discussed in the proposal, the Bureau understands that loans that satisfy the criteria in § 1026.3(h) generally provide a benefit to consumers and are predominantly made by housing finance agencies (HFAs) or by private creditors who partner with HFAs and extend credit

[38] 12 CFR 1024.2(b) (defining federally related mortgage loan for purposes of Regulation X).

pursuant to HFA guidelines (collectively, HFA program loans). The Bureau explained in the proposal that it understood that many of the low-cost housing assistance loans that satisfy the criteria in § 1026.3(h) are not covered transactions subject to the TILA-RESPA integrated disclosure requirements because they are neither subject to a finance charge nor payable in more than four installments, as required by the coverage test in § 1026.1(c)(1).[39] These loans generally are, however, federally related mortgage loans. Thus, unless they meet the criteria in § 1026.3(h) and qualify for the partial exemption in Regulation X § 1024.5(d)(2), lenders[40] making these housing assistance loans must comply with the RESPA disclosure requirements. In the proposal, the Bureau stated that it had received information that many HFAs were having difficulty finding lenders to partner with in making these loans because, following the introduction of the TILA-RESPA integrated disclosures, some vendors and loan originator systems no longer support the RESPA disclosures. The Bureau expressed concern that the limited support for the RESPA disclosures might make it difficult for HFAs, other nonprofits, and private lenders to make housing assistance loans available to low- and moderate-income borrowers if they are not able to take advantage of the partial exemption.

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[39] Section 1026.1(c)(1) provides that, in general, Regulation Z applies to each individual or business that offers or extends credit, other than a person excluded from coverage by section 1029 of the Consumer Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376, when four conditions are met: (i) The credit is offered or extended to consumers; (ii) The offering or extension of credit is done regularly; (iii) The credit is subject to a finance charge or is payable by a written agreement in more than four installments; and (iv) The credit is primarily for personal, family, or household purposes.

[40] Note that RESPA and TILA differ in their terminology. Whereas Regulation X generally refers to "lenders" and "borrowers," Regulation Z generally refers to "creditors" and "consumers." This Supplementary Information uses "lenders" and "borrowers" in its discussion of Regulation X and the RESPA disclosures and "creditors" and "consumers" in its discussion of Regulation Z, the TILA-RESPA integrated disclosures, and the partial exemptions generally.

Among the criteria for the partial exemption is § 1026.3(h)(5), which provides that the total of costs payable by the consumer at consummation must be less than 1 percent of the amount of credit extended and include no charges other than fees for recordation, application, and housing counseling. The Bureau proposed to revise § 1026.3(h)(5) to clarify the costs that may be payable by the consumer at consummation without loss of eligibility for the partial exemption. Specifically, it proposed to clarify that transfer taxes, in addition to fees for recordation, application, and housing counseling, may be payable by the consumer at consummation without losing eligibility for the partial exemption. It also proposed to exclude recording fees and transfer taxes from the 1-percent threshold on total costs payable by the consumer at consummation. The Bureau proposed these changes to enable more loans to satisfy the criteria in § 1026.3(h), which the Bureau believed would support the extension of beneficial, low-cost credit to consumers. In addition, the Bureau proposed to amend comment 3(h)-2 and to add comments 3(h)-3 and -4. For the reasons discussed below, the Bureau is adopting § 1026.3(h)(5) as proposed, and is adopting comments 3(h)-3 and -4 as proposed but renumbered as comments 3(h)-4 and -5.

Additional criteria for the partial exemption are found in § 1026.3(h)(6), which requires the creditor to comply with all other applicable requirements of Regulation Z in connection with the transaction, including without limitation the disclosures required by § 1026.18. For the reasons discussed below, the Bureau is revising § 1026.3(h)(6) to permit the provision of the Loan Estimate and Closing Disclosure to satisfy this criteria for the partial exemption. The Bureau is revising the introductory text of § 1026.3(h) and comments 3(h)-1 and -2 to reflect the revisions to § 1026.3(h)(6). The Bureau is adding new comment 3(h)-3 to clarify further the

relationship between the partial exemption in § 1026.3(h) and the parallel partial exemption for certain federally related mortgage loans in Regulation X § 1024.5(d)(2).

Comments Received

The Bureau received many comments supporting the proposal to clarify that transfer taxes may be charged in connection with the transaction without loss of eligibility for the partial exemption and to exclude recording fees and transfer taxes from the 1-percent threshold. Several commenters stated that the proposal would allow more housing assistance loans to satisfy the criteria for the partial exemption and would thus increase the availability of such loans. Some commenters specified that recording fees and transfer taxes on their own often preclude housing assistance loans from qualifying for the partial exemption and limit creditors' ability to offer such loans. One HFA commented that it offers a housing assistance program with loans ranging from $1,000 to $10,000, and that, in one county in the State in which it operates, it costs $222 to record four pages of a mortgage. As a result, the HFA stated that recording fees alone often prevent even the maximum $10,000 loan from being eligible for the partial exemption. A consumer group commenter stated that the proposal to exclude recording fees and transfer taxes from the 1-percent threshold was reasonable, if such fees and taxes are the reason that HFAs and nonprofits are having difficulty making otherwise exempt loans within the current 1-percent threshold. Another HFA recommended that the Bureau limit costs payable by the consumer in connection with the transaction to recording fees, transfer taxes, a reasonable application fee, and a reasonable housing counseling fee, and, along with an industry commenter, stated that 1 percent would be the appropriate threshold on permissible application and housing counseling fees.

Several commenters stated that the proposal to exclude recording fees and transfer taxes from the 1-percent threshold would not create or increase the risk of abuse or other consumer harm. Some commenters stated that the proposal would not increase such risks because recording fees and transfer taxes are determined by State and local officials, rather than by HFAs or other parties to the transaction. One industry commenter also stated that the provision of the disclosures required by § 1026.18 for transactions that satisfy the partial exemption would limit any potential abuse by creditors. A consumer group commenter stated that the risk that creditors would inflate the application and housing counseling fees that would remain subject to the 1-percent threshold if the proposal were finalized is mitigated by the requirement that these fees be bona fide and reasonable. The commenter recommended that the Bureau require creditors to maintain adequate documentation of these fees so borrowers and regulators can verify that the fees are truly bona fide and reasonable.

Many commenters that generally supported the proposal encouraged the Bureau to adopt further amendments to the partial exemption. For example, two industry commenters urged the Bureau to treat settlement or closing fees as allowable fees for purposes of the partial exemption and to exclude them from the 1-percent threshold. These commenters stated that the settlement or closing fees charged by a third-party settlement provider, and not by the creditor, can affect the creditor's ability to meet the 1-percent threshold.

Many commenters recommended expanding access to the partial exemption or providing broader exemptions from Regulation X or Z for HFA program loans or HFAs that originate loans. One trade association representing HFAs recommended that the partial exemption be expanded to include all HFA second-lien loan programs to ensure that the RESPA disclosures would never be required for any HFA program subordinate lien. This commenter stated that the

RESPA disclosures are required for many HFA program loans that do not meet the partial exemption. It stated further that, because many HFA lending partners have updated their systems to comply with the TILA-RESPA integrated disclosure requirements, such lending partners have difficulty generating the RESPA disclosures and have thus decreased or suspended their participation in HFA program lending. This commenter expressed concern that other reasonable fees may still prevent some loans from meeting the criteria in proposed § 1026.3(h), and that certain other beneficial HFA program loans, such as those that help consumers avoid foreclosure, obtain home repairs, or make energy efficiency improvements, would not qualify for the partial exemption due to the inability to meet criteria aside from the 1-percent threshold.

One industry commenter stated that, although it believes consumers should still receive meaningful disclosures of the cost of credit, the Bureau could exempt HFA program loans from Regulation Z disclosure requirements when the creditor itself imposes no charges in connection with the loan. A trade association recommended a full exemption from Regulation Z for HFA down payment assistance loans that have no finance charge and are payable in four or fewer installments. A trade association representing HFAs stated that, if the Bureau chose not to adopt further amendments to the partial exemption itself, an exemption from the disclosure requirements in Regulations X and Z for HFA second-lien loans would be an appropriate method to ensure HFAs can continue to serve constituents without being limited by the disclosure rules. A few HFA commenters requested full exemptions from Regulations X and Z for HFA program loans or for HFAs that originate loans without regard to the criteria in § 1026.3(h) and stated that such exemptions would better enable HFAs to work with lenders.

A trade association representing HFAs and a few HFA commenters stated that exemptions from Regulations X and Z, either in full or in part, for HFA program loans or HFAs

themselves would not increase risk to consumers because HFAs are mission-driven entities that would continue to require consumer disclosures. These commenters also noted that the Bureau has previously extended exemptions to HFA program loans or HFAs themselves in the Ability-to-Repay, HOEPA, and Mortgage Servicing Final Rules. A few of these commenters suggested that the Bureau adopt the same definition of HFA as set forth in § 1026.41(e)(4)(ii)(B), which cross-references the definition in 24 CFR 266.5, while one commenter stated that HFAs are defined as special purpose credit programs under Regulation B.

In response to the Bureau's request for comment, one nonprofit commenter expressed strong opposition to explicitly limiting the § 1026.3(h) partial exemption to HFAs and private creditors who partner with HFAs and extend credit pursuant to HFA guidelines. It stated that many entities, such as community banks and credit unions, use the partial exemption and do not partner with HFAs. An individual commenter stated that the partial exemption affects entities other than HFAs, including hundreds of county and municipal programs as well as nonprofit organizations that administer block grants and other programs designed for low- and moderate-income individuals.

Many commenters discussed the disclosures required for loans that satisfy the criteria for the partial exemption, HFA program loans, or housing assistance loans generally. A few commenters expressed concern that the unique characteristics of the loans that satisfy the criteria for the partial exemption may make it difficult to comply with the § 1026.18 disclosure requirements. For example, one trade association stated that some loan origination systems cannot create the disclosures required by § 1026.18 where the interest rate or finance charge is zero, with the result that lenders must complete these disclosures manually. This commenter stated further that some lenders and loan origination systems no longer maintain the ability to

create RESPA disclosures as such disclosures are no longer required for most of their loans and expressed a belief that the same was true for the disclosures required by § 1026.18.

Many commenters advocated permitting creditors to use TILA-RESPA integrated disclosures more broadly, either in connection with all loans that satisfy the criteria for the partial exemption, all HFA program loans, or all housing assistance loans. Two trade associations recommended that, for loans subject to TILA and RESPA as well as for loans only subject to RESPA, creditors be permitted to provide TILA-RESPA integrated disclosures for loans that satisfy the partial exemption in place of the § 1026.18 disclosures. One trade association stated that TILA-RESPA integrated disclosures are generally understood by consumers and, due to systems updates, easier to produce than the disclosures required by § 1026.18. One HFA recommended that, to reduce burden and facilitate lender partnerships with HFAs, the Bureau should clarify that lenders are allowed to provide TILA-RESPA integrated disclosures for loans that qualify for the partial exemption or any broader exemption that the Bureau might adopt.

One trade association representing HFAs and one HFA commenter urged the Bureau to allow HFAs to use TILA-RESPA integrated disclosures in connection with all HFA program second-lien loans, regardless of whether such loans qualify for the partial exemption. They stated that this option would improve efficiency and reduce the compliance burden because many operating systems are set up to provide TILA-RESPA integrated disclosures. The trade association stated that many HFAs and their lending partners currently provide TILA-RESPA integrated disclosures with limited difficulty when loans subject to Regulation Z do not meet the partial exemption and that such disclosures effectively convey critical loan information to consumers. A different HFA recommended that the Bureau eliminate the partial exemption and

instead subject all HFA program second-lien loans to the TILA-RESPA integrated disclosure requirements.

A few industry and vendor commenters recommended that the Bureau require or permit TILA-RESPA integrated disclosures to be provided in connection with all housing assistance loans. These commenters expressed concern with the process of determining whether the partial exemption applies to a transaction and stated that a streamlined disclosure requirement for these loans would reduce compliance burden and costs to creditors while improving consumer understanding. Two commenters recommended that the Bureau adopt an alternative disclosure specific to HFAs.

One industry commenter recommended an immediate effective date or an effective date six months after the issuance of the final rule for the proposed amendments to the partial exemption. The commenter recommended that TILA-RESPA integrated disclosures be required for all housing assistance loans, and stated that such a requirement would involve minimal systems changes for creditors. One trade association representing HFAs requested that any amendments to expand the partial exemption for HFA second-lien loan programs be effective immediately. It stated that most HFA lending partners are already able to produce TILA-RESPA integrated disclosures and expressed concern that an implementation period could prevent some consumers from benefiting from HFA program lending.

Finally, a few commenters raised other issues regarding the partial exemption. Some industry commenters stated that there is uncertainty regarding the disclosure requirements where a loan satisfies the criteria for the partial exemption at the time of application, but, due to changed circumstances or an increase in closing costs charged by third parties, no longer satisfies the criteria after the initial disclosure is provided. One industry commenter stated that

uncertainty also exists regarding the disclosure requirements when a loan initially does not satisfy the criteria for the partial exemption but subsequent borrower-requested changes during loan origination result in the loan qualifying for the partial exemption. A few commenters requested further clarification around the partial exemption generally and the preparation of the required disclosures. One HFA requested that the Bureau consider revisions to the seven-business-day review period between the initial disclosures and consummation in § 1026.19(e)(1)(iii) and 1026.19(a)(2) for HFA down payment and closing cost assistance loans, stating that determinations regarding consumers' income that occur during these review periods could affect their eligibility for such loans.

The Final Rule

The Bureau is adopting § 1026.3(h)(5) as proposed to clarify the costs that may be payable by the consumer at consummation without loss of eligibility for the partial exemption. Further, and for the reasons discussed below, the Bureau is revising the criteria in § 1026.3(h)(6) to permit the provision of a Loan Estimate and Closing Disclosure that comply with Regulation Z. The Bureau is revising the introductory text of § 1026.3(h) and comments 3(h)-1 and -2 to reflect revised § 1026.3(h)(6). The Bureau is adopting new comment 3(h)-3 to clarify further the relationship between the partial exemption in § 1026.3(h) and the parallel partial exemption for certain federally related mortgage loans in Regulation X § 1024.5(d)(2). The Bureau is adopting comments 3(h)-3 and -4 as proposed, but renumbered as comments 3(h)-4 and -5 to reflect the addition of new comment 3(h)-3.

The Bureau is revising the introductory text of § 1026.3(h) to reflect revised § 1026.3(h)(6). Currently, the introductory text explains that the special disclosure requirements in § 1026.19(e), (f), and (g) do not apply to a transaction that satisfies all of the criteria in

§ 1026.3(h). Section 1026.19(g) sets forth requirements regarding the special information booklet, while § 1026.19(e) and (f) set forth requirements regarding the Loan Estimate and Closing Disclosure, respectively. As discussed in more detail below, the Bureau is revising § 1026.3(h)(6) to require the provision of either disclosures described in § 1026.18 that comply with Regulation Z or disclosures described in § 1026.19(e) and (f) that comply with Regulation Z as a condition for satisfying the partial exemption. Consequently, if a creditor chooses to provide the TILA disclosures described in § 1026.18 in connection with a transaction that meets the criteria in § 1026.3(h), that transaction is exempt from the requirements in § 1026.19(e), (f), and (g). If a creditor instead chooses to provide the Loan Estimate and Closing Disclosure in connection with a transaction that meets the criteria in § 1026.3(h), that transaction is exempt from the requirements in § 1026.19(g), but not from the requirements in § 1026.19(e) and (f). Thus, § 1026.3(h) provides an exemption from § 1026.19(g), and, depending on which of the available disclosure options a creditor chooses under § 1026.3(h)(6), may also provide an exemption from § 1026.19(e) and (f). Accordingly, the Bureau is revising the introductory text of § 1026.3(h) to explain that the special disclosure requirements in § 1026.19(g) and, unless the creditor chooses to provide the disclosures described in § 1026.19(e) and (f), in § 1026.19(e) and (f) do not apply to a transaction that satisfies all of the criteria in § 1026.3(h).

As adopted, § 1026.3(h)(5)(i) provides that the costs payable by the consumer in connection with the transaction at consummation are limited to: (A) recording fees; (B) transfer taxes; (C) a bona fide and reasonable application fee; and (D) a bona fide and reasonable fee for housing counseling services. Section 1026.3(h)(5)(ii) requires that the total of costs payable by the consumer under § 1026.3(h)(5)(i)(C) and (D) be less than 1 percent of the amount of credit extended. By clarifying that transfer taxes may be charged in connection with the transaction

and excluding recording fees and transfer taxes from the 1-percent threshold, the Bureau believes that final § 1026.3(h)(5) will enable more transactions to satisfy the criteria for the partial exemption in § 1026.3(h). This will also facilitate access to the partial exemption from the RESPA disclosures in Regulation X § 1024.5(d)(2), which the Bureau believes will further support the extension of low-cost, non-interest bearing, subordinate-lien loans to low- and moderate-income borrowers.

As discussed in the proposal, the Bureau believes that, because recording fees and transfer taxes are established by State and local jurisdictions, there is limited risk that excluding such fees and taxes from the 1-percent threshold in § 1026.3(h)(5)(ii) will result in consumer harm. Additionally, in light of comments received, the Bureau has determined that 1 percent is the appropriate threshold for the bona fide and reasonable application and housing counseling fees that may be payable by the consumer at consummation. As one consumer group commenter noted, there is limited risk that the application and housing counseling fees that remain subject to the 1-percent threshold will be inflated because such fees must be bona fide and reasonable.

The Bureau declines to revise § 1026.3(h)(5) to permit additional third-party settlement or closing fees to be charged in connection with the transaction and to exclude such fees from the 1-percent threshold, as requested by some commenters. The Bureau intends that transactions eligible for the partial exemption in § 1026.3(h) remain low-cost, include only a certain limited set of fees that may be charged to the consumer, and pose little risk of consumer harm. It does not believe it would be appropriate to permit a creditor to provide only the disclosures required by § 1026.18, rather than the more detailed TILA-RESPA integrated disclosures or RESPA disclosures, as applicable, in connection with transactions that include additional third-party fees not established by State or local jurisdictions and not subject to the 1-percent threshold.

Regarding one commenter's recommendation that the Bureau require creditors to maintain adequate documentation demonstrating that the application and housing counseling fees permitted under § 1026.3(h)(5)(i) are bona fide and reasonable, the Bureau notes that § 1026.25(a) sets forth the general requirement that creditors retain evidence of compliance with Regulation Z for two years after the date disclosures are required to be made or action is required to be taken, and that § 1026.25(c)(1) sets forth the specific record retention requirements for evidence of compliance with the requirements of § 1026.19(e) and (f). Additionally, as discussed in more detail below, revised comment 3(h)-2 clarifies that, although not all requirements of § 1026.3(h) must be reflected in the loan contract, the creditor must retain evidence of compliance with those provisions, as required by § 1026.25(a) or (c), as applicable.

Additionally, in order to address concerns about access to the partial exemption that were discussed in the Bureau's proposal and further discussed by several commenters, the Bureau is revising § 1026.3(h)(6) to provide creditors with greater optionality in satisfying the criteria for the partial exemption. Specifically, revised § 1026.3(h)(6) provides that the following disclosures must be provided: (i) disclosures described in § 1026.18 that comply with Regulation Z; or (ii) alternatively, disclosures described in § 1026.19(e) and (f) that comply with Regulation Z. Thus, under revised § 1026.3(h)(6), the creditor must provide either the TILA disclosures of the cost of credit or the Loan Estimate and Closing Disclosure and must comply with all Regulation Z requirements pertaining to the disclosures provided. Revised § 1026.3(h)(6) omits language in current § 1026.3(h)(6) that made compliance with all other applicable requirements of Regulation Z a condition for satisfying the criteria for the partial exemption. Because the Bureau is revising the commentary to § 1026.3(h) to provide more precise guidance regarding how transactions must comply with Regulation Z in order to satisfy

the criteria for the partial exemption, the Bureau does not believe that the omitted language is necessary. As discussed in more detail below, the Bureau believes the flexibility provided by revised § 1026.3(h)(6) will further expand access to the partial exemption.

The Bureau finds persuasive comments recommending permissible use of TILA-RESPA integrated disclosures for all loans with characteristics that satisfy the non-procedural criteria for the partial exemption in § 1026.3(h)(1) through (5), as a way to address the issues regarding access to the partial exemption for which the Bureau requested comment. It is revising § 1026.3(h)(6) to further facilitate compliance for lenders making federally related mortgage loans that qualify for the partial exemption from the RESPA disclosures in Regulation X § 1024.5(d)(2). Regulation X § 1024.5(d) provides a partial exemption from certain RESPA disclosure requirements for federally related mortgage loans that meet the criteria set forth in § 1026.3(h). Specifically, Regulation X § 1024.5(d) provides that lenders are exempt from the RESPA settlement cost booklet, RESPA Good Faith Estimate, RESPA settlement statement (HUD-1), and application servicing disclosure statement requirements of §§ 1024.6 through 1024.8, 1024.10, and 1024.33(a) (the RESPA disclosures) for a federally related mortgage loan: (1) that is subject to the special disclosure requirements for certain consumer credit transactions secured by real property set forth in Regulation Z § 1026.19(e), (f), and (g); or (2) that satisfies the criteria in Regulation Z § 1026.3(h). Thus, a lender for a federally related mortgage loan must provide the RESPA disclosures unless: (1) the loan is a covered transaction for purposes of the TILA-RESPA integrated disclosure requirements; or (2) the transaction meets the partial exemption in § 1026.3(h). Where a federally related mortgage loan is not a covered transaction subject to the disclosure requirements in § 1026.19(e), (f), and (g) because, for example, it imposes no finance charge and is payable in four or fewer installments, and also does not satisfy

the criteria in § 1026.3(h), the lender must provide the RESPA disclosures. Under the current rule, to meet the conditions of the partial exemption in § 1026.3(h), lenders making such loans must provide the disclosures required by § 1026.18; voluntary provision of TILA-RESPA integrated disclosures does not satisfy the criteria in § 1026.3(h), and thus does not make the loan eligible for the partial exemption from the RESPA disclosures in Regulation X § 1024.5(d)(2).

Revised § 1026.3(h)(6) provides lenders additional flexibility regarding the required disclosures for those federally related mortgage loans that are not otherwise subject to the disclosure requirements in § 1026.19(e), (f), and (g) and that satisfy the criteria in § 1026.3(h). Under revised § 1026.3(h)(6), to satisfy the criteria in § 1026.3(h), lenders making such loans may choose to provide either TILA disclosures or Loan Estimates and Closing Disclosures that comply with Regulation Z. Such lenders may also continue to instead provide the RESPA disclosures in connection with a transaction that would otherwise meet the criteria in § 1026.3(h) and qualify for the partial exemption in Regulation X § 1024.5(d)(2).

In addition, revised § 1026.3(h)(6) further clarifies and reduces burden regarding the disclosure requirements for loans that are covered transactions subject to the requirements in § 1026.19(e), (f), and (g) and that satisfy the criteria in § 1026.3(h). Under the current rule, creditors making a loan subject to the disclosure requirements in § 1026.19(e), (f), and (g) may continue to provide compliant TILA-RESPA integrated disclosures even if the loan satisfies the non-procedural criteria for the partial exemption in § 1026.3(h)(1) through (5). There is no requirement to utilize the partial exemption. The final rule clarifies further this optionality for loans subject to the disclosure requirements in § 1026.19(e), (f), and (g). Under revised § 1026.3(h)(6), when such loans satisfy the criteria in § 1026.3(h) creditors may elect to take advantage of the partial exemption and provide compliant TILA disclosures described in

§ 1026.18, or they may, at their option, continue to provide compliant Loan Estimates and Closing Disclosures. The Bureau does not believe it is necessary that the special information booklet described in § 1026.19(g) be provided to a consumer in connection with both a first lien and a subordinate lien that meets the criteria in § 1026.3(h), and the Bureau believes that not requiring the special information booklet would help address the issues regarding access to the partial exemption that were raised in the proposal and by commenters. The Bureau is therefore clarifying in revised § 1026.3(h)(6) that, if a creditor elects to provide TILA-RESPA integrated disclosures in connection with a transaction that satisfies the partial exemption, it need only provide the disclosures described in § 1026.19(e) and (f).

The Bureau expects that, for federally related mortgage loans that are not covered transactions subject to the disclosure requirements in § 1026.19(e), (f), and (g), revised § 1026.3(h)(6) should reduce further the procedural burden associated with the required disclosures when such loans meet the criteria for the partial exemption. As discussed in the proposal, the Bureau understands that many loan origination systems have been updated to produce TILA-RESPA integrated disclosures and that some vendors and loan origination systems no longer support the RESPA disclosures. The Bureau understands from comments received that some loan origination systems similarly have limited capabilities with regard to the disclosures required by § 1026.18 and that it should, at least in some instances, be operationally easier to provide compliant Loan Estimates and Closing Disclosures for loans that satisfy the criteria for the partial exemption. The Bureau continues to believe that, for the low-cost, non-interest bearing, subordinate loans with characteristics that satisfy the criteria in § 1026.3(h), compliant TILA disclosures under § 1026.18 would be relatively straightforward to calculate. However, the Bureau recognizes that, in light of increased systems support for the Loan Estimate

and Closing Disclosure, it would facilitate compliance if creditors are permitted the option to provide either disclosures described in § 1026.18 or § 1026.19(e) and (f) that comply with Regulation Z for loans that satisfy the criteria for the partial exemption.

At the same time, the Bureau believes that the additional flexibility finalized in § 1026.3(h)(6) will not result in consumer harm when loans satisfy the criteria for the partial exemption. Revised § 1026.3(h)(6) provides that the disclosures described in § 1026.18 and the disclosures described in § 1026.19(e) and (f) must comply with Regulation Z. This means that regardless of which disclosures a creditor or lender chooses to provide, the creditor or lender must comply with all requirements of Regulation Z pertaining to those disclosures. Further, the Bureau again notes that § 1026.3(h) exempts transactions only from the requirements of § 1026.19(g) and, unless the creditor chooses to provide the Loan Estimate and Closing Disclosure, § 1026.19(e) and (f); it does not exempt transactions from any other applicable requirements of Regulation Z. In recommending broader use of TILA-RESPA integrated disclosures for certain housing assistance loans, commenters noted that such disclosures effectively present loan information and are generally understood by consumers. The Bureau believes that under revised § 1026.3(h)(6) consumers will receive disclosures that effectively convey the cost of credit in connection with a transaction that satisfies the criteria for the partial exemption.

In the TILA-RESPA Final Rule, the Bureau declined to provide creditors the option of either complying with the TILA-RESPA integrated disclosure requirements or § 1026.18, based in part on the Bureau's belief that permitting the disclosures required by § 1026.18 would decrease the disclosure burden for creditors making the covered transactions and thus render the option of using TILA-RESPA integrated disclosures unnecessary. However, commenters have

indicated that HFAs that are currently required to provide TILA-RESPA integrated disclosures do so with limited difficulty and that it may facilitate compliance for some creditors to provide TILA-RESPA integrated disclosures rather than the disclosures required by § 1026.18 when the partial exemption is satisfied. Accordingly, the Bureau now believes that the optionality provided in revised § 1026.3(h)(6) will more effectively carry out the intent of the partial exemption in facilitating access to certain beneficial low-cost, non-interest bearing, subordinate-lien transactions for low- and moderate-income consumers by reducing the disclosure burden associated with such transactions.

The Bureau declines to permit or require broader use of TILA-RESPA integrated disclosures for all HFA program loans or all housing assistance loans without regard to the criteria in § 1026.3(h), as requested by some commenters. Thus, lenders making federally related mortgage loans not subject to the disclosure requirements in § 1026.19(e), (f), and (g) must continue to provide the RESPA disclosures where the criteria in § 1026.3(h) is not satisfied. The Bureau recognizes that, in some instances, different disclosures may be required in connection with a borrower's first lien and subordinate financing. However, as discussed above, the Bureau believes that final § 1026.3(h)(5) should enable more transactions to satisfy the criteria in § 1026.3(h), which will facilitate access to the partial exemption from the RESPA disclosures in Regulation X § 1024.5(d)(2). The Bureau also notes that, to the extent loans do not meet the criteria in § 1026.3(h) because of additional fees beyond those permitted under § 1026.3(h)(5), such loans may be subject to a finance charge and thus may be covered transactions subject to the disclosure requirements in § 1026.19(e), (f), and (g). Further, the partial exemption is intended to apply where the specific characteristics of the transaction generally ensure that the consumer is obtaining beneficial, low-cost credit. Regulation Z does

not provide, nor did commenters suggest, a definition of what constitutes a housing assistance loan. In the absence of supporting evidence indicating how many federally related mortgage loans are not covered transactions subject to the disclosure requirements in § 1026.19(e), (f), and (g) and would also not meet the criteria in final § 1026.3(h), the Bureau does not believe it is appropriate to permit or require broader use of TILA-RESPA integrated disclosures for such loans at this time. The Bureau will continue to monitor the market with regard to the required provision of the RESPA disclosures.

The Bureau also declines to apply the partial exemption to all HFA program second-lien loans, as suggested by one commenter. The Bureau believes that the criteria finalized in § 1026.3(h)(5) should increase the ability of HFAs and lenders making such loans to take advantage of the partial exemption from the RESPA disclosures in Regulation X § 1024.5(d)(2). Such broader access to the partial exemption will address concerns regarding the required provision of the RESPA disclosures for many loans that do not currently meet the criteria in § 1026.3(h). Additionally, the Bureau notes that the purpose of the partial exemption in § 1026.3(h), cross-referenced in Regulation X § 1024.5(d)(2), is to reduce the procedural burden associated with the disclosures for certain low-cost, non-interest bearing, subordinate-lien transactions that represent a very limited risk for consumer harm. Although the Bureau understands that HFA lending is characterized by low-cost financing, it believes that, to the extent an HFA program loan does not satisfy the criteria for the partial exemption, it would not be appropriate to permit the creditor to provide only the streamlined disclosures described in § 1026.18 in connection with that loan. Further, a few commenters indicated that the partial exemption is utilized for many non-HFA program loans, and the Bureau has determined that it would not be appropriate to require these loans to meet all of the criteria in § 1026.3(h) while

applying automatically the partial exemption to all HFA program second-lien loans without regard to their specific characteristics. As to the commenter's concern that other beneficial loans in addition to those that provide down payment assistance may not meet the criteria in § 1026.3(h), the partial exemption also applies to transactions that provide closing cost or other similar home buyer assistance, property rehabilitation and energy efficiency assistance, and foreclosure avoidance or prevention.

For similar reasons, the Bureau is not adopting a broader exemption from Regulation X or Z, either in full or in part, for HFA program loans or HFAs that originate mortgage loans. As to suggestions by commenters that such broader exemptions could reduce burden and incentivize creditors to make housing assistance loans available to low- and-moderate income consumers, the Bureau again notes that the revised criteria in final § 1026.3(h) should facilitate access to the partial exemption and alleviate the disclosure burden associated with such loans. Additionally, a full exemption from Regulation X or its disclosure requirements could result in borrowers not receiving advance disclosure of settlement costs, which would undermine one of the express purposes of RESPA and would not be authorized under RESPA's section 19(a) exemption authority. The Bureau has considered the factors for the exemption authority in TILA section 105(f) and has determined that further exemptions from Regulation Z could undermine the goal of consumer protection and deny important disclosure benefits to consumers. Comments indicating that HFAs would provide alternative disclosures if broader regulatory exemptions were granted did not provide specific examples demonstrating that such disclosures would adequately protect consumers from risk of abuse. Moreover, commenters did not provide a clear consensus as to how an HFA should be defined, whether an exemption from Regulation X or Z

should apply in full or only to disclosure requirements, or whether any such exemption should apply to HFA program loans or HFAs directly.

As to one commenter's recommendation that nothing in Regulation Z should apply to an HFA down payment assistance loan that is not a covered transaction under Regulation Z, the Bureau notes that such a loan would only be subject to the requirements of Regulation Z if it met the criteria in § 1026.3(h) and the lender elected to take advantage of the partial exemption from the RESPA disclosures in Regulation X § 1024.5(d)(2). A lender is not required to utilize the partial exemption from the RESPA disclosures in Regulation X § 1024.5(d)(2). However, where a lender chooses to utilize the partial exemption from the RESPA disclosures and provide either disclosures described in § 1026.18 or § 1026.19(e) and (f), respectively, the lender must comply with all Regulation Z requirements that pertain to such disclosures. For example, in this situation the lender must comply with the general disclosure requirements set forth in § 1026.17, even if the lender would not otherwise be subject to those requirements.

The Bureau believes that § 1026.3(h), and in particular, the requirement that disclosures in compliance with Regulation Z be provided when a loan meets the partial exemption, is distinguishable from other requirements of Regulation Z from which the Bureau has exempted HFA program loans or HFAs themselves. The Bureau believes that the requirement that creditors provide compliant disclosures of the cost of credit where a loan satisfies the criteria for the partial exemption provides consumers a benefit and, especially in light of the flexibility adopted in the final rule, is not unnecessarily burdensome.

With respect to commenters' requests that the revisions to the criteria for the partial exemption become effective immediately, the Bureau refers to the discussion in part VI, below, regarding the final rule's effective date and optional compliance period. As a consequence of the

optional compliance period, beginning on the effective date of this final rule, creditors and lenders have the option to take advantage of the partial exemptions in § 1026.3(h) and Regulation X § 1024.5(d)(2), respectively, by satisfying the criteria in § 1026.3(h) as revised by this final rule. Furthermore, if such creditors or lenders choose to satisfy revised § 1026.3(h)(6) by providing compliant Loan Estimates and Closing Disclosures, they may use the optional compliance period to phase in the changes to the TILA-RESPA integrated disclosure requirements that are made elsewhere in this final rule, in the manner described in part VI.

As to commenters that expressed uncertainty regarding situations where changed circumstances effect the applicability of the partial exemption, the Bureau refers such commenters to § 1026.17(c), which sets forth requirements pertaining to the basis of the disclosures and the use of estimates, and to § 1026.17(e), which addresses the effect of subsequent events that cause a disclosure to become inaccurate. As to commenters that requested further clarification around the partial exemption generally and the preparation of the required disclosures, the Bureau believes final § 1026.3(h) provides clear and objective criteria for the partial exemption and that the requirements pertaining to the disclosures described in § 1026.18 or § 1026.19(e) and (f), as applicable, are adequately set forth in Regulation Z. The Bureau declines one commenter's request to revise the seven-business-day review period between the provision of the initial disclosures and consummation for certain HFA loans. Section 1026.19(a)(2)(i) implements the timing requirements in TILA section 128(b)(2)(A), and, in adopting § 1026.19(e)(1)(iii)(B), the Bureau explained that the seven-business-day review

period would best carry out the purposes of TILA and RESPA by facilitating the informed use of credit and ensuring advance disclosure of settlement charges.[41]

The Bureau is revising comment 3(h)-1 for further clarity and to reflect the revisions adopted in § 1026.3(h)(6) regarding the disclosures required as a condition for meeting the partial exemption. The Bureau is revising the first sentence of comment 3(h)-1 to explain that § 1026.3(h) exempts certain transactions from the disclosures described in § 1026.19(g), and, under certain circumstances, § 1026.19(e) and (f). Revised comment 3(h)-1 includes an explanation that § 1026.3(h) exempts transactions from § 1026.19(e) and (f) if the creditor chooses to provide disclosures described in § 1026.18 that comply with Regulation Z pursuant to § 1026.3(h)(6)(i), but does not exempt transactions from § 1026.19(e) and (f) if the creditor chooses to provide disclosures described in § 1026.19(e) and (f) that comply with Regulation Z pursuant to § 1026.3(h)(6)(ii). Revised comment 3(h)-1 clarifies that creditors may provide, at their option, either the disclosures described in § 1026.18 or the disclosures described in § 1026.19(e) and (f). The revised comment explains further that, in providing these disclosures, creditors must comply with all provisions of Regulation Z relating to those disclosures. Finally, revised comment 3(h)-1 explains that § 1026.3(h) does not exempt transactions from any of the other requirements of Regulation Z to the extent they are applicable, and that, for transactions that would otherwise be subject to § 1026.19(e), (f), and (g), creditors must comply with all other applicable requirements of Regulation Z, including the consumer's right to rescind the transaction under § 1026.23, to the extent that provision is applicable. Thus, final comment 3(h)-1 clarifies that, where a transaction satisfies the criteria for the partial exemption in § 1026.3(h),

[41] 78 FR 79730, 79802 (Dec. 31, 2013).

and therefore satisfies the parallel partial exemption in Regulation X § 1024.5(d)(2), the creditor may provide either disclosures described in § 1026.18 or TILA-RESPA integrated disclosures in connection with the transaction. The creditor must, however, provide compliant disclosures that satisfy all Regulation Z requirements pertaining to those disclosures, even where the loan would not otherwise be subject to those requirements.

The Bureau is also adopting comment 3(h)-2 with additional clarifications and revisions to reflect revised § 1026.3(h)(6). Revised comment 3(h)-2 explains that the conditions that the transaction not require the payment of interest under § 1026.3(h)(3) and that repayment of the amount of credit extended be forgiven or deferred in accordance with § 1026.3(h)(4) must be reflected in the loan contract. It explains that the other requirements of § 1026.3(h) need not be reflected in the loan contract, but the creditor must retain evidence of compliance with those provisions, as required by § 1026.25(a) or (c), as applicable. As revised, comment 3(h)-2 provides further that, in particular, because the exemption in § 1026.3(h) means the creditor is not required to provide the disclosures of closing costs under § 1026.37 or § 1026.38 (unless the creditor chooses to provide disclosures described in § 1026.19(e) and (f) that comply with Regulation Z), the creditor must retain evidence reflecting that the costs payable by the consumer in connection with the transaction at consummation are limited to recording fees, transfer taxes, a bona fide and reasonable application fee, and a bona fide and reasonable housing counseling fee, and that the total of application and housing counseling fees is less than 1 percent of the amount of credit extended, in accordance with § 1026.3(h)(5). Finally, the revised comment provides that, unless the itemization of the amount financed provided to the consumer sufficiently details this requirement, the creditor must establish compliance with § 1026.3(h)(5) by some other written document and retain it in accordance with § 1026.25(a) or (c), as applicable.

Because a creditor may provide the Loan Estimate and Closing Disclosure to meet the conditions of the partial exemption under revised § 1026.3(h)(6), the Bureau is finalizing comment 3(h)-2 to include a reference to § 1026.25(c), which, as discussed above, sets forth the record retention requirements regarding § 1026.19(e) and (f). Additionally, because creditors have the option of providing the Loan Estimate and Closing Disclosure under revised § 1026.3(h)(6), the Bureau is revising comment 3(h)-2 to explain that the exemption in § 1026.3(h) means the creditor is not required to provide, rather than the consumer will not receive, the disclosures of closing costs under § 1026.37 or § 1026.38. The revised comment clarifies, however, that creditors are required to provide the disclosures of closing costs under § 1026.37 and § 1026.38 if they choose to provide disclosures described in § 1026.19(e) and (f) that comply with Regulation Z. For further clarity and consistency with the requirements in final § 1026.3(h)(5)(i), revised comment 3(h)-2 refers to a bona fide and reasonable application fee and a bona fide and reasonable housing counseling fee, instead of application fees and housing counseling fees.

The Bureau is adding new comment 3(h)-3 to clarify further the relationship between the partial exemption in § 1026.3(h) and the parallel partial exemption for certain federally related mortgage loans in Regulation X § 1024.5(d)(2). New comment 3(h)-3 explains that Regulation X provides a partial exemption from certain Regulation X disclosure requirements in Regulation X § 1024.5(d). It explains further that the partial exemption in Regulation X § 1024.5(d)(2) provides that certain Regulation X disclosure requirements do not apply to a federally related mortgage loan, as defined in Regulation X § 1024.2(b), that satisfies the criteria in § 1026.3(h). Finally, new comment 3(h)-3 clarifies that for a federally related mortgage loan that is not otherwise covered by Regulation Z, lenders may satisfy the criteria in § 1026.3(h)(6) by

providing the disclosures described in § 1026.18 that comply with Regulation Z or the disclosures described in § 1026.19(e) and (f) that comply with Regulation Z. Thus, under this final rule, to meet the criteria in § 1026.3(h) and qualify for the partial exemption in Regulation X § 1024.5(d)(2), lenders making such loans may choose to provide either compliant TILA disclosures or compliant Loan Estimates and Closing Disclosures, even though such loans are not otherwise subject to Regulation Z.

The Bureau is adopting new comments 3(h)-3 and -4 as proposed, but renumbered as comments 3(h)-4 and -5 to reflect the addition of new comment 3(h)-3. New comment 3(h)-4 refers to comment 37(g)(1)-1 for a discussion of what constitutes a recording fee for purposes of Regulation Z, and new comment 3(h)-5 refers to comment 37(g)(1)-3 for a discussion of what constitutes a transfer tax for purposes of Regulation Z.

For the reasons set forth above, the Bureau is revising the introductory text of § 1026.3(h), adopting § 1026.3(h)(5) as proposed, and revising § 1026.3(h)(6). The Bureau is revising comments 3(h)-1 and -2, adopting new comment 3(h)-3, and adopting comments 3(h)-3 and -4 as proposed but renumbered as comments 3(h)-4 and -5.

Legal Authority

TILA section 105(a) authorizes the Bureau to adjust or except from the disclosure requirements of TILA all or any class of transactions to facilitate compliance with TILA. As set forth above, revising the criteria for the § 1026.3(h) partial exemption will facilitate compliance by enabling more housing assistance loans to qualify for the partial exemption at § 1026.3(h) and reducing regulatory burden for a class of transactions that the Bureau believes generally benefit consumers and pose little risk of consumer harm. RESPA section 19(a) authorizes the Bureau to grant reasonable exemptions for classes of transactions, as may be necessary to achieve the

purposes of RESPA. By broadening the § 1026.3(h) partial exemption, this amendment will enable more federally related mortgage loans to qualify for the partial exemption at Regulation X § 1024.5(d)(2) and permit lenders to provide the streamlined disclosures described in § 1026.18 that comply with Regulation Z or the disclosures described in § 1026.19(e) and (f) that comply with Regulation Z for these low-cost, non-interest bearing, subordinate-lien transactions.

In addition, the Bureau believes that the disclosure requirements that covered persons must meet to qualify for the § 1026.3(h) partial exemption will help ensure that the features of these mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with these mortgage transactions, consistent with Dodd-Frank Act section 1032(a).

Section 1026.17 General Disclosure Requirements

17(c) Basis of Disclosures and Use of Estimates

17(c)(6)

Allocation of Costs

The Bureau's Proposal

Comment 17(c)(6)-5 explains that a creditor, when using the special rule under § 1026.17(c)(6), may disclose certain construction-permanent transactions as multiple transactions, and may allocate buyers points or similar amounts imposed on the consumer between the construction and permanent phases of the transaction in any manner the creditor chooses. However, comment 17(c)(6)-5 does not provide guidance on how to allocate amounts so as to avoid violating TILA section 129(r), which prohibits structuring a loan transaction or dividing any loan transaction into separate parts for the purpose of evading the high-cost mortgage provisions.

To help ensure consumer protections are not evaded and to assist creditors in properly disclosing costs associated with construction-permanent loans, the Bureau proposed to amend comment 17(c)(6)-5 to provide greater clarity by adding a "but for" test to allocate amounts to the construction phase of a construction-permanent transaction if a creditor chooses to disclose the credit extended as more than one transaction.

Specifically, the Bureau proposed to amend comment 17(c)(6)-5 to explain that in a construction-permanent transaction disclosed as more than one transaction, the creditor must allocate to the construction phase all amounts that would not be imposed but for the construction financing. All other amounts would be allocated to the permanent financing. The proposed comment illustrated how the allocation would be made, using inspection and handling fees for the staged disbursement of construction loan proceeds as an example, and provided examples of how to allocate origination and application fees between the construction phase and the permanent phase.

The Bureau solicited comment on the proposed revision of comment 17(c)(6)-5, including whether the proposal presented a clear and understandable method of allocating costs between the construction phase and the permanent phase, whether there are fees that may not be clearly allocated to one phase or the other, and whether the proposed revision would improve or obscure consumer understanding and promote or discourage comparison shopping.

Comments Received

Comments received on the proposed amendment to comment 17(c)(6)-5 were generally favorable. A trade association, a group of vendors, and a compliance specialist stated the proposed clarification would help provide clarity and be useful for allocating fees specific to the construction phase when separate disclosures are used. The compliance specialist commenter

additionally noted the clarification would assist creditors in avoiding potential regulatory criticisms or other liability if challenged for evading the high-cost mortgage provisions. However, commenters also expressed uncertainty as to what amounts the proposed comment covered and how to allocate fees for services that might be used for both the construction and permanent phases. One trade association noted that there are services that are required for both phases of the financing that would not be charged "if not but for" one phase alone. This commenter provided the example of updated abstracts and final title opinions obtained in connection with the construction loan and then reused for the permanent loan. The commenter also stated that fees should be lower on the permanent financing loan if the consumer stays with the same creditor that financed the construction, as many of the paid-for services can also be used for the permanent financing. The commenter requested that the final rule continue to permit the creditor to allocate points and similar charges in any way the creditor chooses when the construction and permanent phases are disclosed separately.

A trade association noted that the appraisal is used to establish the combined maximum loan amount for both the construction and permanent phases. The commenter expressed uncertainty as to how the fee for such an appraisal would be allocated. A vendor group and a compliance specialist both commented that, "but for" the construction financing, the land would not have been purchased and, consequently, under the proposed comment, all the costs of the loan would be reflected on the Loan Estimate and Closing Disclosure provided in connection with the construction financing.

The Final Rule

The Bureau is adopting the proposed amendments to comment 17(c)(6)-5, but with modifications. In response to comments that sought clarification of the scope of costs covered

by the “but for” approach, the Bureau is revising comment 17(c)(6)-5 to identify more precisely the costs to which the “but for” allocation applies. As revised, comment 17(c)(6)-5 specifies that the “but for” test only applies to the finance charges under § 1026.4 and the points and fees under § 1026.32(b)(1), the amounts that are most relevant in determining whether the loan is a high-cost mortgage under § 1026.32 or a higher-priced mortgage loan under § 1026.35 or a qualified mortgage under § 1026.43(e). When a creditor uses the special rule in § 1026.17(c)(6) to disclose credit extensions as multiple transactions, fees and charges must be allocated for purposes of calculating disclosures. In the case of a construction-permanent loan that a creditor chooses to disclose as multiple transactions, the creditor must allocate to the construction transaction finance charges under § 1026.4 and points and fees under § 1026.32(b)(1) that would not be imposed but for the construction financing. If a creditor charges separate finance charges under § 1026.4 and points and fees under § 1026.32(b)(1) for the construction phase and the permanent phase, such fees and charges must be allocated to the phase for which they are charged. All other finance charges under § 1026.4 and points and fees under § 1026.32(b)(1) must be allocated to the permanent financing. Using the “but for” allocation for these amounts when separate disclosures are provided for the phases of a construction-permanent loan will allow creditors to determine more accurately whether the permanent phase is a high-cost mortgage or higher-priced mortgage loan or qualified mortgage.

The Bureau is revising the examples in comment 17(c)(6)-5 to reflect these changes. The examples as finalized do not reference application fees because application fees are not

necessarily finance charges under § 1026.4 or points and fees under § 1026.32(b)(1).[42] As proposed, the comment stated that, if a creditor charges an application or origination fee for construction-only financing but charges a greater application or origination fee for construction-permanent financing, the difference between the two fees must be allocated to the permanent transaction. Under this example, if the origination fee for construction-only financing is $750, and the origination fee for construction-permanent financing is $1000, then $750 is allocated to the construction-only financing and $250 is allocated to the permanent financing. This example is retained in the comment as finalized, though the reference to an application fee is not. Creditors would conduct the same kind of analysis to determine how other fees and charges are allocated between the construction and permanent phases when separate disclosures are used.

As finalized, the revisions to comment 17(c)(6)-5 also provide that fees and charges that are not finance charges under § 1026.4 or points and fees under § 1026.32(b)(1) may be allocated between the transactions in any manner the creditor chooses. The comment provides an example of the fees and charges that may be allocated in any manner the creditor chooses. The example states that a reasonable appraisal fee paid to an independent, third-party appraiser may be allocated in any manner the creditor chooses because it would be excluded from the finance charge pursuant to § 1026.4(c)(7) and excluded from points and fees pursuant to § 1026.32(b)(1)(iii). This additional commentary addresses how disclosures may be made when an appraisal is used to establish the combined maximum loan amount for both the construction phase and the permanent phase, a situation that commenters on the proposed rule specifically

[42] Under § 1026.4(c)(1), application fees charged to all applicants for credit, whether or not credit is actually extended, are excluded from the finance charge. Conversely, if the application fee is only charged to applicants for credit upon the extension of credit, the application fee is included in the finance charge.

described. Creditors would conduct the same kind of analysis to determine other fees and charges that may be allocated in any manner.

May Be Permanently Financed by the Same Creditor

The Bureau's Proposal

The Bureau proposed to add new comment 17(c)(6)-6 to clarify that the may be permanently financed by the same creditor condition specified in § 1026.17(c)(6)(ii), if satisfied, permits a creditor to treat a construction-permanent loan as one transaction or more than one transaction. Proposed comment 17(c)(6)-6 explained that a loan to finance the construction of a dwelling may be considered permanently financed by the same creditor, within the meaning of § 1026.17(c)(6)(ii), if the creditor generally makes both construction and permanent financing available to qualifying consumers, unless a consumer expressly states that the consumer will not obtain permanent financing from the creditor. Under this approach, the construction phase may be permanently financed by the same creditor, within the meaning of § 1026.17(c)(6)(ii), in all cases other than where permanent financing is not available at all from the creditor (*i.e.*, the creditor does not offer permanent financing) or the consumer expressly informs the creditor that the consumer will not obtain permanent financing from the creditor. This proposal aligned with proposed comment 19(e)(1)(iii)-5, which provided that a creditor determines the timing requirements for providing the Loan Estimate for both the construction and permanent financing based on when the application for the construction financing is received, so long as the creditor "may" provide the permanent financing. The creditor would have still been permitted to make the disclosures as a single transaction or as more than one transaction, as provided by § 1026.17(c)(6)(ii).

The Bureau solicited comment on the proposed addition of comment 17(c)(6)-6 to determine whether the condition that a construction loan may be permanently financed by the same creditor should be considered satisfied even if a consumer expressly states that the consumer will not seek permanent financing from the creditor, as long as the creditor generally makes permanent financing available to qualifying consumers. The Bureau also solicited comment on how the issues described in the proposal might be addressed if the Bureau adopted the proposal as final, and on any additional issues or complexities presented by the proposal, as well as how those might be addressed.

Comments Received

Generally, commenters opposed the Bureau's proposal to clarify the meaning of "may be permanently financed" in comment 17(c)(6)-6. Commenters indicated that there was no need for clarification as creditors already understand the meaning of "may be permanently financed" as used in § 1026.17(c)(6)(ii).

Commenters also believed the proposal could result in consumer harm. Two trade associations and one industry commenter stated that because the proposal would require creditors to provide a disclosure for the permanent phase, even if the consumer had not applied for permanent financing, consumers could perceive unrequested permanent financing disclosures as a pressure tactic to enter into permanent financing with the creditor. Commenters stated that consumers would generally be confused by receiving disclosures for financing they did not apply for and for which the creditor had not made a commitment to provide. One commenter expressed that consumers would understand the receipt of disclosures for permanent financing to mean that construction-only loans would not be available.

Commenters also discussed additional compliance burdens that could result from the proposed clarification. Three trade associations and two industry commenters indicated that creditors would have difficulty accurately disclosing the terms of the permanent transaction at the time they receive an application for construction-only financing. Commenters stated that, at the time of the construction disclosures, creditors may not know the availability, costs, and consumer application information for the permanent financing. Further, one trade association and one industry commenter stated that, because construction and permanent financings are usually in different departments, with different staff and different underwriting requirements, simultaneous disclosure would be extremely difficult and burdensome for such institutions. Additionally, one trade association and two industry commenters stated that creditors could have difficulty documenting a consumer's express rejection of permanent financing because there are many ways a consumer could reject permanent financing. One software vendor indicated that creditors would need a new form to document a consumer's rejection of permanent financing.

Additionally, commenters asserted that the proposal would be in conflict with comment 17(c)(6)-2. Commenters stated that proposed comment 17(c)(6)-6 would force treatment of the permanent and construction financing as a single transaction despite comment 17(c)(6)-2's express optionality for separate transactions.

The Final Rule

The Bureau is persuaded by commenters' concerns over compliance and consumer understanding. The Bureau concludes that proposed comment 17(c)(6)-6 would not provide enough benefit to outweigh the potential consumer confusion and compliance burdens that may result. For these reasons the Bureau is not adopting proposed comment 17(c)(6)-6.

17(f) Early Disclosures

As detailed in the section-by-section analysis of § 1026.19, the Bureau proposed and is now adopting conforming amendments to comments 17(f)-1 and -2 to reflect a change to the coverage of § 1026.19(e) and (f) to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit, regardless of whether a cooperative unit is treated as real property under State or other applicable law.

Section 1026.18 Content of Disclosures

As detailed in the section-by-section analysis of § 1026.19, the Bureau proposed and is now adopting conforming amendments to comments 18-3, 18(g)-6, and 18(s)-1 and -4 to reflect a change to the coverage of § 1026.19(e) and (f) to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit, regardless of whether a cooperative unit is treated as real property under State or other applicable law.

Section 1026.19 Certain Mortgage and Variable-Rate Transactions

Cooperatives

The Bureau's Proposal

The TILA-RESPA Rule generally applies to closed-end consumer credit transactions secured by real property, other than reverse mortgages. Regulation Z does not define the term "real property," but § 1026.2(b)(3) states that, unless defined in Regulation Z, the words used therein have the meanings given to them by State law or contract. The Bureau proposed to amend § 1026.19(e), (f), and (g) and comments 19(e)(1)(i)-1 and -2, 19(f)(1)(i)-1, and 19(f)(3)(ii)-3, to cover closed-end consumer credit transactions secured by cooperative units, regardless of whether State or other applicable law considers cooperative units to be real or personal property. The Bureau also proposed conforming amendments to §§ 1026.1(d)(5) and

1026.37(c)(5)(i), the paragraph title for § 1026.25(c)(1), a subheading for the commentary to § 1026.25(c)(1), and comments 17(f)-1 and -2, 18-3, 18(g)-6, 18(s)-1 and -4, and 37(a)(7)-2.

Comments Received

Commenters, including consumer groups, creditors, vendors, trade associations, GSEs, a secondary market investor, and an individual commenter, supported the amendments to Regulation Z, including the amendments to § 1026.19(e) and (f), to cover closed-end consumer credit transactions secured by cooperative units, regardless of whether State or other applicable law considers cooperative units to be real or personal property.

A creditor commented that the proposed amendments to § 1026.19(g), whereby the scope of coverage for § 1026.19(g) would be delineated by cross-referencing § 1026.19(e)(1)(i), would have had the effect of eliminating the current § 1026.19(g) coverage of open-end transactions (except as provided in § 1026.19(g)(1)(ii) and (iii)). To the extent that the Bureau were to finalize the amendments to § 1026.19(g) as proposed, that creditor commented that § 1026.19(g)(1)(ii) and its reference to home equity lines of credit would be unnecessary and potentially confusing. An individual commenter requested clarification as to whether transactions secured by cooperative units are covered by the TILA-RESPA Rule if they are for business purposes. Consumer group commenters noted that there may be some uncertainty, beyond the TILA-RESPA Rule, as to whether Regulation X otherwise covers transactions secured by cooperative units.

A trade association supported the amendments to cover closed-end consumer credit transactions secured by cooperative units, regardless of whether State or other applicable law considers cooperative units to be real or personal property, while noting that these changes would require reprogramming and therefore impose implementation costs. Another trade

association requested that these amendments become effective retroactively to ease compliance. Another trade association and two creditors requested retroactive protection from liability for creditors who have been treating loans secured by cooperative units as covered by the TILA-RESPA Rule as well as retroactive protection for creditors who have not been doing so, regardless of whether State or other applicable law considers cooperative units to be real or personal property.

The Final Rule

For the reasons discussed below, the Bureau is adopting §§ 1026.19(g) and 1026.37(c)(5)(i) substantially as proposed and is adopting, as proposed, the other amendments to Regulation Z, including § 1026.19(e) and (f), to cover closed-end consumer credit transactions secured by cooperative units, regardless of whether State or other applicable law considers cooperative units to be real or personal property. Specifically, in part in response to commenters' concerns, § 1026.19(g), as finalized, covers consumer credit transactions secured by real property or a cooperative unit, regardless of whether they are open-end or closed-end transactions (and except as provided in § 1026.19(g)(1)(ii) and (iii)). As finalized, § 1026.19(g)'s coverage continues not to be limited to closed-end transactions (except as provided in § 1026.19(g)(1)(ii) and (iii)). To conform § 1026.37(c)(5)(i) with the other amendments to Regulation Z, including § 1026.19(e) and (f), § 1026.37(c)(5)(i), as finalized, specifically references the real property or cooperative unit securing the transaction.

Regarding a commenter's request for clarification as to whether transactions secured by cooperative units are covered by the TILA-RESPA Rule if they are for business purposes, the Bureau notes that an extension of credit primarily for a business, commercial or agricultural purpose is not subject to Regulation Z, as provided in current § 1026.3(a) and the associated

commentary. With respect to commenters asserting that there may be some uncertainty, beyond the TILA-RESPA Rule, as to whether other parts of Regulation X cover transactions secured by cooperative units, the Bureau notes that both RESPA and Regulation Z include cooperatives within the definition of federally related mortgage loan.[43]

In response to comments regarding the effective date and implementation period, as discussed in part VI below, the rule will be effective 60 days from publication in the *Federal Register*, but there will be an optional compliance period in effect until October 1, 2018.

Legal Authority

The Bureau is finalizing this amendment pursuant to its authority under Dodd-Frank Act section 1032(a) and (f), TILA section 105(a), and RESPA section 19(a). Section 1032(f) of the Dodd-Frank Act required that the Bureau propose for public comment rules and model disclosures combining the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws,[44] and, as discussed above, RESPA and TILA each generally cover loans secured by cooperative units.

The Bureau believes that applying the TILA-RESPA Rule to cover closed-end consumer loans secured by cooperative units is consistent not only with both TILA and RESPA but also with general industry practice. Consequently, the Bureau believes that this extension of coverage will facilitate compliance by industry, which is one of the purposes of TILA. Furthermore, because this amendment will ensure that more consumers receive the integrated disclosures, which the Bureau believes, based on its extensive testing of the disclosures, to be

[43] 12 U.S.C. 2602(1); 12 CFR 1024.2(b).
[44] Public Law 111-203, 124 Stat. 1376, 2007 (2010) (codified at 12 U.S.C. 5532(f)).

superior to the pre-existing TILA and RESPA disclosures and because the Bureau believes that the integrated disclosures are generally effective for transactions secured by cooperative units, whether or not the cooperative unit is treated as real property under State or other applicable law, the Bureau also believes this amendment will carry out the purposes of TILA and RESPA to promote the informed use of credit and more effective advance disclosure of settlement costs, respectively. In addition, the Bureau believes the integrated disclosure requirements improve consumer understanding of the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a).

19(e) Mortgage Loans—Early Disclosures

19(e)(1) Provision of Disclosures

19(e)(1)(iii) Timing

The Bureau's Proposal

Section 1026.19(e)(1)(iii) sets forth the timing requirements for providing the Loan Estimate. Generally, the creditor must deliver the Loan Estimate or place it in the mail not later than the third business day after the creditor receives the consumer's application and not later than the seventh business day before consummation. The Bureau proposed to add comment 19(e)(1)(iii)-5 to explain how the timing requirements apply in the case of construction-permanent loans.

Proposed comment 19(e)(1)(iii)-5 summarized the provisions of §§ 1026.17(c)(6)(ii) and 1026.19(e)(1)(iii) and comment 17(c)(6)-2 relevant to construction-permanent loans, referenced proposed comment 17(c)(6)-6, and explained the ways a creditor that generally makes both construction and permanent financing available complies with the timing requirements in § 1026.19(e)(1)(iii). Proposed comment 19(e)(1)(iii)-5 explained that, when the creditor

received a consumer's application for either construction financing only (without the consumer expressly stating that the consumer will not obtain permanent financing from the creditor) or an application for combined construction-permanent financing, the creditor complies with § 1026.19(e)(1)(iii) by delivering or placing in the mail the disclosures required by § 1026.19(e)(1)(i) for both the construction financing and the permanent financing, either disclosed as one or more than one transaction, within the timing requirements of § 1026.19(e)(1)(iii). Proposed comment 19(e)(1)(iii)-5.i through -5.iv would have provided illustrative examples of how the Loan Estimate timing provisions apply to construction-permanent loans. Proposed comment 19(e)(1)(iii)-5.v would have explained that, if a consumer expressly states that the consumer will not obtain permanent financing from the creditor after a combined construction-permanent financing disclosure already has been provided, the creditor complies with § 1026.17(c)(6)(ii) by issuing a revised disclosure for construction financing only in accordance with the timing requirements of § 1026.19(e)(4).

The Bureau also solicited comment on an alternative approach, under which a creditor generally would provide a Loan Estimate only for the financing for which a consumer applies. For example, under the alternative approach, if a consumer applies for construction financing only, a creditor would be required to provide the Loan Estimate for only the construction financing. Similarly, under the alternative approach if the consumer applies for construction and permanent financing at the same time, the creditor would be required to provide the Loan Estimates for both phases within three days of receiving the application. If the construction financing may be permanently financed by the same creditor, the proposed alternative approach stated the creditor would be permitted to provide the Loan Estimate for the permanent financing

at the same time as the Loan Estimate was provide for the construction financing, but would not be required to do so.

Comments Received

As explained in the section-by-section analysis for comment 17(c)(6)-6, commenters generally opposed the proposed clarification of "may be permanently financed." Similarly, commenters opposed the clarification under comment 19(e)(1)(iii)-5 that, consistent with the proposed clarification of "may be permanently financed," would have required creditors to provide, upon receiving a consumer's application for construction financing only, the disclosures required by § 1026.19(e)(1)(i) for both the construction financing and the permanent financing not later than the third business day after the creditor receives the application and not later than the seventh business day before consummation.

Commenters indicated that the proposed clarification of "may be permanently financed" would cause consumer confusion, and the related requirements under comment 19(e)(1)(iii)-5, would create substantial compliance burdens and confusion about the meaning of comment 17(c)(6)-2. As explained in the section-by-section analysis for comment 17(c)(6)-6, for these reasons, the Bureau is not finalizing proposed comment 17(c)(6)-6.

However, several commenters indicated their support for the alternative proposal under comment 19(e)(1)(iii)-5. Two trade associations explicitly supported the Bureau's proposed alternative. Additionally, two other commenters indicated they would support an alternative that allowed the creditor to provide disclosures only for the products for which a consumer applied, similar to the alternative approach mentioned in the Bureau's proposal. One commenter requested that, if the consumer applied for separate construction and permanent financing, the

Bureau require the creditor provide a separate Loan Estimate for the construction and permanent financing within three days of that application.

The Final Rule

For the reasons stated above, the Bureau is adopting the alternative approach proposed with clarifications. The Bureau notes this approach should ease any coordination challenges occasioned by different departments, staff, and systems handling the construction and permanent phase underwriting. Different departments of the same creditor may continue to provide the construction and permanent disclosures separately, but within the timing requirements of § 1026.19(e)(1)(iii). Additionally, the Bureau believes that new documentation procedures and systems would not be required under the rule as finalized. The Bureau also believes this approach is consistent with comment 17(c)(6)-2.

In response to comments, the Bureau is clarifying that, for construction-permanent financing transactions, the creditor is required to disclose the Loan Estimate only for the transaction for which it received an application. As finalized, comment 19(e)(1)(iii)-5.i provides an example of receipt of an application for construction financing only and explains that the Loan Estimate for the construction transaction is the only disclosure that is required to be provided at that time. Aligned with comment 17(c)(6)-2, the Bureau clarifies under comment 19(e)(1)(iii)-5.ii that, if a consumer's applications for separate construction and permanent financing transactions are received at the same time, the creditor provides the disclosures required under § 1026.19(e)(1)(i) as either a combined disclosure or separately for each phase of the transaction and within the timing requirements provided by § 1026.19(e)(1)(iii). Comment 19(e)(1)(iii)-5.iii explains the timing requirements under § 1026.19(e)(1)(iii) when construction and permanent phase applications are received separately. Further, comment 19(e)(1)(iii)-5.iv

clarifies that a creditor need not provide a Loan Estimate for permanent financing for which a separate application is made if the creditor has already provided a Loan Estimate for the permanent phase under § 1026.17(c)(6)(ii), and may instead proceed with the disclosures required under § 1026.19(f)(1)(i).

19(e)(1)(vi) Shopping for Settlement Service Providers

Section 1026.19(e)(1)(vi)(A) defines how a creditor permits a consumer to shop for settlement services. Section 1026.19(e)(1)(vi)(B) requires the creditor to identify, on the Loan Estimate, the settlement services for which a consumer may shop. Section 1026.19(e)(1)(vi)(C), among other things, sets forth the requirement to provide the consumer with a written list identifying available providers of the settlement services for which a consumer is permitted to shop.

Identifying Settlement Services and Available Providers

The Bureau's Proposal

Comment 19(e)(1)(vi)-2 refers to the requirement in § 1026.19(e)(i)(vi)(B) that the creditor identify, on the Loan Estimate, the settlement services for which the consumer is permitted to shop and provides that the content and format for disclosure of such services can be found at § 1026.37(f)(3). In response to several informal guidance inquiries regarding the treatment of a settlement service that was excluded from the Loan Estimate, the Bureau proposed to revise comment 19(e)(1)(vi)-2 to simplify the disclosure requirements under § 1026.19(e)(1)(vi)(B) in an effort to reduce uncertainty and to ease compliance burden. The proposed revisions to comment 19(e)(1)(vi)-2 would have clarified that the creditor must specifically identify the settlement services for which a consumer is permitted to shop unless, based on the best information reasonably available to the creditor, the creditor knows that the

service is provided as part of a package or combination of settlement services (hereinafter referred to as a package) offered by a single service provider.

Comment 19(e)(1)(vi)-4, among other things, provides requirements for disclosing settlement service providers under § 1026.19(e)(1)(vi)(C). It explains that the written list of providers must identify settlement service providers that provide services in the area in which the consumer or property is located, and must include sufficient information about each provider to allow the consumer to contact the provider. In response to several informal guidance inquiries, the Bureau proposed to revise comment 19(e)(1)(vi)-4 to simplify the disclosure requirements under § 1026.19(e)(1)(vi)(C) in an effort reduce uncertainty and ease compliance burden. The proposed revision to comment 19(e)(1)(vi)-4 was identical to the proposed revision to comment 19(e)(1)(vi)-2.

Comments Received

Several commenters expressed appreciation for the Bureau's interest in clarifying and simplifying these provisions. A consumer group stated that the Bureau should not allow the disclosure of a package, as proposed, and should require the disclosure of all settlement services, on the written list, for which a consumer may shop because allowing creditors to disclose a package of settlement services would obscure costs, reduce competition, and hinder the consumer's ability to shop. Industry commenters stated that the Bureau should define and clarify, with examples, what a package offered by a single service provider means. Industry comments included requests for clarification about the interplay between the itemization requirements under §§ 1026.37(f)(3) and 1026.38(f)(3) and the ability to package settlement services; how the disclosure of a package would work when title services and settlement or closing services are provided by different service providers; whether the phrase "provided by a

single service provider" would allow for the use of third parties; and whether a package could include settlement services with different tolerance thresholds.

The Final Rule

For the reasons set forth below, the Bureau has decided not to finalize the proposed revisions to comments 19(e)(1)(vi)-2 and -4. Instead the Bureau is revising comment 19(e)(1)(vi)-2 to clarify that § 1026.19(e)(1)(vi)(B) provides that the creditor who permits a consumer to shop for settlement services must identify the settlement services required by the creditor for which the consumer is permitted to shop in the disclosures provided pursuant to § 1026.19(e)(1)(i). The Bureau is also revising comment 19(e)(1)(vi)-4 to clarify that § 1026.19(e)(1)(vi)(C) provides that the creditor must identify settlement service providers, that are available to the consumer, for the settlement services required by the creditor for which a consumer is permitted to shop. The Bureau is also revising comment 19(e)(1)(vi)-1 to conform with final comments 19(e)(3)(ii)-6 and 19(e)(3)(iii)-2.

The purpose of the proposed revisions to comments 19(e)(1)(vi)-2 and -4 was to clarify and simplify the disclosure requirements for settlement services on the Loan Estimate and written list of providers. As discussed above, commenters presented concerns about the potential complexity and uncertainty the proposed revisions might introduce. In pursuit of the original purpose to minimize confusion and compliance burden the Bureau believes it can achieve this purpose by revising comments 19(e)(1)(vi)-2 and -4 to clarify the current itemization requirements under § 1026.19(e)(1)(vi) instead of introducing a new disclosure scheme.

The Bureau understands from the comments that there may be uncertainty as to the extent a creditor must itemize settlement services on the Loan Estimate and the written list of providers. In revising comment 19(e)(1)(vi)-2, the Bureau is clarifying that the disclosure of settlement

services under § 1026.19(e)(1)(vi)(B) need not include all settlement services that may be charged to the consumer, but must include at least those settlement services required by the creditor for which the consumer may shop. The Bureau is also revising comment 19(e)(1)(vi)-4 to provide that the creditor must identify settlement service providers, that are available to the consumer, for the settlement services that are required by the creditor for which a consumer is permitted to shop.

Current comment 19(e)(1)(vi)-2 notes that § 1026.19(e)(i)(vi)(B) requires the creditor to identify, on the Loan Estimate, the settlement services a consumer is allowed to shop for and cross-references § 1026.37(f)(3). Current and final comment 19(e)(1)(vi)-3, among other things, notes the requirement in § 1026.19(e)(1)(vi)(C) to identify at least one available provider of a settlement service for which a consumer may shop and also cross-references § 1026.37(f)(3). In addition, the settlement service providers identified on the written list required by § 1026.19(e)(vi)(C) must correspond to the settlement services for which the consumer may shop. Comment 37(f)(3)-1 provides that items included under the subheading "Services You Can Shop For" pursuant to § 1026.37(f)(3) are for those services: that the creditor requires in connection with its decision to make the loan; that would be provided by persons other than the creditor or mortgage broker; and for which the creditor allows the consumer to shop in accordance with § 1026.19(e)(1)(vi). Thus the provisions under § 1026.19(e)(1)(vi) require the creditor to identify, on the Loan Estimate and the written list of providers, the settlement services required by the creditor for which a consumer is permitted to shop. For example, if a creditor requires a consumer to purchase lender's title insurance and the creditor permits the consumer to shop for lender's title insurance, the creditor is required by the provisions under § 1026.19(e)(1)(vi) to disclose the lender's title insurance, on the Loan Estimate, and at least one

provider of the required settlement service, on the written list, capable of coordinating or performing the services necessary to provide the required lender's title insurance. However, the creditor is not required by the provisions under § 1026.19(e)(1)(vi) to provide a detailed breakdown of all related fees that are not themselves required by the creditor but that may be charged to the consumer such as a notary fee, title search fee, or other ancillary and administrative services needed to perform or provide the settlement service required by the creditor.[45] The same principle is true for the disclosure of settlement services under § 1026.37(f)(3). This is consistent with the Bureau's concern, noted in the TILA-RESPA Final Rule, that a complete breakdown of all settlement services payable by the consumer could lead to information overload for the consumer and thereby hinder the consumer's ability to shop.[46]

As discussed in the respective section-by-section analyses of § 1026.19(e)(3)(ii) and § 1026.19(e)(3)(iii), the Bureau is adding new comment 19(e)(3)(ii)-6 and revising comment 19(e)(3)(iii)-2, which provide that, for fees paid to an unaffiliated third party, if the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C), good faith is determined under § 1026.19(e)(3)(ii). Final comments 19(e)(3)(ii)-6 and 19(e)(3)(iii)-2 further provide that whether the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances. As a result, the Bureau is making a conforming amendment in final

[45] This is consistent with comment 19(e)(3)(ii)-2 which explains that § 1026.19(e)(3)(ii) provides flexibility in disclosing individual fees by focusing on aggregate amounts and illustrates this principle with an example of a Loan Estimate not including an estimated charge for a notary fee that is subject to § 1026.19(e)(3)(ii) but the notary fee is later charged to the consumer. In such example, the creditor does not violate § 1026.19(e)(3)(ii) as long as the sum of all charges subject to § 1026.19(e)(3)(ii), including the notary fee, does not exceed the 10 percent threshold.
[46] See the Bureau's discussion regarding information overload in the TILA-RESPA Final Rule. 78 FR 79730, 79742 (Dec. 31, 2013).

comment 19(e)(1)(vi)-1 to clarify that whether the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances.

Methods of Providing Settlement Service Providers List

Section 1026.19(e)(1)(vi) defines how a creditor permits a consumer to shop for services and requires the creditor to identify the settlement services for which the consumer may shop and provide a written list identifying at least one available provider for each of those services. The Bureau proposed to amend comment 19(e)(1)(vi)-3 to clarify that, although use of the model form H-27 of appendix H to this part is not required, creditors using it properly will be deemed to be in compliance with § 1026.19(e)(1)(vi)(C).

A creditor requested that the Bureau consider mandating the use of form H-27 rather than allowing creditors to use different variations. However, several industry commenters urged the Bureau to further clarify that creditors are not required to use model form H-27 and that creditors do not lose the model form's safe harbor protection if they opt not to include estimated fee amounts on the written list of providers.

The Bureau is adopting comment 19(e)(1)(vi)-3 substantially as proposed but with certain minor changes. Regarding commenters' requests to consider mandating the use of form H-27 or, alternatively, to further clarify that creditors are not required to use it, the Bureau notes that TILA section 105(b) permits creditors to delete non-required information or rearrange the format of a model form without losing the safe harbor protection afforded by use of the model form if, in making such deletion or rearranging the format, the creditor does not affect the substance, clarity, or meaningful sequence of the disclosure. As finalized, comment 19(e)(1)(vi)-3 explicitly notes that flexibility. Regarding commenters' request for clarification that creditors do

not lose the model form's safe harbor protection if they delete the column for estimated fee amounts, the Bureau notes that current § 1026.19(e)(1)(vi) does not require creditors to list the estimated fees of the service providers. As finalized, comment 19(e)(1)(vi)-3 states that deleting the column for estimated fee amounts is an example of an acceptable change to form H-27. Consistent with final comment 19(e)(1)(vi)-4, final comment 19(e)(1)(vi)-3 also clarifies that the settlement service providers identified on the written list required by § 1026.19(e)(1)(vi)(C) must correspond to the required settlement services for which the consumer may shop, disclosed under § 1026.37(f)(3).

19(e)(3) Good Faith Determination for Estimates of Closing Costs

Section 1026.19(e)(3)(i) provides the general rule that an estimated closing cost is in good faith if the charge paid by or imposed on the consumer does not exceed the estimate for the cost as disclosed on the Loan Estimate. However, § 1026.19(e)(3)(ii) provides that estimates for certain third-party services and recording fees are in good faith if the sum of all such charges paid by or imposed on the consumer does not exceed the sum of all such charges disclosed on the Loan Estimate by more than 10 percent (the "10-percent tolerance" category). Section 1026.19(e)(3)(iii) provides that certain other estimates are in good faith so long as they are consistent with the best information reasonably available to the creditor at the time they are disclosed, regardless of whether the amount paid by the consumer exceeds the estimate disclosed on the Loan Estimate. The Bureau proposed minor changes and technical corrections for clarification purposes to § 1026.19(e)(3) and its accompanying commentary. Each of these proposed changes is discussed in more detail below.

The Bureau is issuing the clarifications to § 1026.19(e)(3) in this final rule pursuant to its authority to prescribe standards for good faith estimates under TILA section 128 and RESPA

section 5, as well as its authority under TILA section 105(a), RESPA section 19(a), section 1032(a) of the Dodd-Frank Act, and, for residential mortgage loans, section 1405(b) of the Dodd-Frank Act. Section 128(b)(2)(A) of TILA provides that, for an extension of credit secured by a consumer's dwelling that also is subject to RESPA, good faith estimates of the disclosures in TILA section 128(a) shall be made in accordance with regulations of the Bureau.[47] Section 5(c) of RESPA states that lenders shall provide, within three days of receiving the consumer's application, a good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement, as prescribed by the Bureau.[48]

The Bureau believes the clarifications to § 1026.19(e)(3) in this final rule are authorized under TILA section 105(a). They effectuate TILA's purposes, and help prevent potential circumvention or evasion of TILA, by helping ensure that the cost estimates are more meaningful and better inform consumers of the actual costs associated with obtaining credit. The clarifications also further TILA's goals by helping ensure more reliable estimates, which should foster competition among financial institutions.

In addition, the Bureau believes the clarifications to § 1026.19(e)(3) in this final rule are consistent with Dodd-Frank Act section 1032(a) because requiring more accurate initial estimates of the costs of the transaction helps ensure that the features of mortgage loan transactions and settlement services will be more fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks

[47] 15 U.S.C. 1638(b)(2)(A).
[48] 12 U.S.C. 2604(c).

associated with the mortgage loan. The Bureau believes the clarifications to § 1026.19(e)(3) in this final rule are also in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b), because providing consumers with more accurate estimates of the cost of the mortgage loan transaction helps improve consumer understanding and awareness of the mortgage loan transaction through the use of disclosure.

Section 19(a) of RESPA authorizes the Bureau to prescribe regulations and make interpretations as may be necessary to achieve the purposes of RESPA,[49] which include the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services.[50] The Bureau believes that the clarifications to § 1026.19(e)(3) in this final rule are necessary to achieve the purposes of RESPA under RESPA section 19(a) because they encourage settlement service provider competition. Each of the clarifications to § 1026.19(e)(3) is discussed in more detail below.

19(e)(3)(i) General Rule

General Rule for Determining Good Faith Under § 1026.19(e)(3)

Section 1026.19(e)(3)(i) provides the general rule that an estimated closing cost is in good faith if the charge paid by or imposed on the consumer does not exceed the estimate for the cost as disclosed on the Loan Estimate. Comment 19(e)(3)(i)-1 clarifies that fees paid to, among others, the creditor, an affiliate of the creditor, or a mortgage broker are subject to that general rule, but § 1026.19(e)(3)(iii) provides that certain estimates are in good faith so long as they are consistent with the best information reasonably available to the creditor at the time they are

[49] 12 U.S.C. 2617(a).
[50] 12 U.S.C. 2601(a).

disclosed, regardless of whether the amount paid by the consumer exceeds the estimate disclosed on the Loan Estimate. The Bureau proposed to modify comment 19(e)(3)(i)-1 to conform it with the regulation text of § 1026.19(e)(3)(iii).

A creditor supported the clarification in proposed comment 19(e)(3)(i)-1. A vendor group noted that proposed comment 19(e)(3)(i)-1 would be a non-substantive technical change. A secondary market investor broadly requested clarification as to which charges are subject to the good faith determination under § 1026.19(e)(3)(i).

The Bureau is adopting comment 19(e)(3)(i)-1 as proposed. Regarding a commenter's broad request for clarification as to which charges are subject to the good faith determination under § 1026.19(e)(3)(i), guidance can be found in § 1026.19(e)(3)(i) through (iii) and the associated commentary.

Paid by or Imposed on the Consumer

Section 1026.19(e)(3)(i) provides that good faith is determined by whether a closing cost paid by or imposed on the consumer does not exceed the amount originally disclosed on the Loan Estimate, while other sections of Regulation Z, including the finance charge definition in § 1026.4(a), are framed in terms of whether the charge is payable by the consumer. The Bureau proposed for comment the view that these standards, "paid by or imposed on the consumer" and "payable by the consumer," are interchangeable. The proposal would have added comment 19(e)(3)(i)-8 to clarify that the phrase "paid by or imposed on," as used in § 1026.19(e)(3)(i), has the same meaning as the term "payable," as used elsewhere in Regulation Z.

A trade group and an industry commenter supported adopting proposed comment 19(e)(3)(i)-8. One industry commenter supported the proposed comment, but stated that the standard should not be applied to specific lender or seller credits. A vendor commenter stated

that creditors may not understand the proposed comment and not accurately disclose costs or conduct the good faith analysis under § 1026.19(e)(3) properly. The vendor commenter stated that the term "payable" would be interpreted by industry to cover any types of fees which the consumer has the ability to pay, rather than the ones the consumer will pay or is legally obligated to pay. One trade group commenter stated that some confusion still exists in industry, as the proposed comment was substantially different from the standard previously discussed in guidance documents issued by the Department of Housing and Urban Development concerning the previous tolerance standards under RESPA. A law firm commenter representing industry stated further clarification of the proposed comment was needed. Lastly, a group of mortgage vendor commenters stated that a charge may be imposed on a consumer but not paid or payable by the consumer.

The comments received indicate that the term "payable" as used in Regulation Z is not clear to industry. Since commenters have shown that the term "payable" is not commonly understood, the Bureau is concerned that proposed comment 19(e)(3)(i)-8 would increase confusion concerning the meaning of the phrase "paid by or imposed on" in § 1026.19(e)(3)(i). Additionally, the Bureau believes that other comments in the Official Interpretations relating to the paragraphs of § 1026.19(e) provide sufficient guidance as to the meaning of the phrase "paid by or imposed on."[51] Accordingly, the Bureau is not adopting proposed comment 19(e)(3)(i)-8.

[51] *See, e.g.,* comment 19(e)(3)(i)-2.

19(e)(3)(ii) Limited Increases Permitted for Certain Charges

The Bureau's Proposal

Comment 19(e)(3)(ii)-2, among other things, explains that § 1026.19(e)(3)(ii) provides flexibility when disclosing individual fees by focusing on aggregate amounts and illustrates this principle with an example. The Bureau understands that there is some uncertainty regarding the interplay between the requirements under § 1026.19(e)(1)(vi), shopping for settlement service providers, and the good faith determination under § 1026.19(e)(3)(ii) and (iii). The Bureau's proposed revisions to comment 19(e)(3)(ii)-2 provided that a creditor is in compliance with § 1026.19(e)(3)(ii) if the creditor permits the consumer to shop for the settlement services disclosed pursuant to § 1026.19(e)(1)(vi) and the aggregate increase in charges does not exceed 10 percent, even if the amount of an individual fee was omitted from the Loan Estimate. As proposed, comment 19(e)(3)(ii)-2 would have clarified further that, if the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C) or the list does not comply with the requirements of § 1026.19(e)(1)(vi)(B) and (C), good faith is determined under § 1026.19(e)(3)(i) instead of § 1026.19(e)(3)(ii) or (iii), regardless of the provider selected by the consumer. The Bureau also proposed technical revisions to comment 19(e)(3)(ii)-2 and to make other clarifying revisions.

Comments Received

The Bureau did not receive comments regarding the proposed revisions to restructure comment 19(e)(3)(ii)-2 and to make other clarifying and technical revisions. Three industry commenters supported the Bureau's proposed clarification regarding compliance with § 1026.19(e)(1)(vi) and the proposal to determine good faith under § 1026.19(e)(3)(i) for required settlement services when the written list of providers is not issued by a creditor.

Most comments focused on the Bureau's proposed clarification regarding compliance with § 1026.19(e)(1)(vi)(B) and (C). A commenter asserted that the good faith determination under § 1026.19(e)(3)(ii) and (iii) should not be tied to whether the written list of providers was issued by the creditor. Several commenters representing various financial services businesses requested that the Bureau clarify and narrow the scope of what constitutes noncompliance with § 1026.19(e)(1)(vi)(B) and (C) under proposed comment 19(e)(3)(ii)-2. In general, these commenters were concerned that inadvertent mistakes and typographical errors could be considered noncompliance under the proposed revision and thereby constitute a violation of § 1026.19(e)(3)(ii) and subject certain settlement services to zero tolerance under § 1026.19(e)(3)(i). Two commenters asked the Bureau to clarify whether a creditor's use of inconsistent terminology between the Loan Estimate, the written list of providers, and the Closing Disclosure would be deemed noncompliance with § 1026.19(e)(3)(ii). One commenter asserted that, if finalized, a strict interpretation of the proposed revision would impose litigation and compliance risk on creditors and affect secondary market opportunities because secondary market participants might not accept loans with typographical errors on the written list of providers or Loan Estimate.

Some commenters asked that the Bureau provide a mechanism to allow for a revised written list of providers if the consumer still has time to shop, in lieu of prescribing the scope of noncompliance with § 1026.19(e)(1)(vi)(B) and (C) under proposed revisions to comment 19(e)(3)(ii)-2. Some commenters stated that neither Regulation Z nor the Bureau's informal guidance discuss the circumstances under which a revised written list of providers may be issued. One commenter, arguing in support of its request to allow for a revised written list of providers, asserted that not allowing for a revised written list of providers to correct an error

would hinder the consumer's ability to shop. Relatedly, some commenters noted the Bureau's informal guidance allowing for a revised written list of providers when a settlement service is added as a result of a change under § 1026.19(e)(3)(iv).[52] These commenters asked the Bureau to clarify whether a revised written list of providers can be provided when a Closing Disclosure is issued in lieu of the Loan Estimate for revised estimates pursuant to § 1026.19(e)(3)(iv).

A trade association representing banks asked the Bureau to clarify whether a service or a fee mistakenly omitted from the Loan Estimate or the written list of providers can be added to the Closing Disclosure and charged to the consumer provided that the sum of the charges is within the 10 percent threshold prescribed in § 1026.19(e)(3)(ii).

The Final Rule

For the reasons discussed below, to conform with final comment 19(e)(3)(iii)-2, the Bureau is not finalizing proposed modifications to comment 19(e)(3)(ii)-2 that would have provided that good faith is determined under § 1026.19(e)(3)(i) instead of under § 1026.19(e)(3)(ii) or (iii) if a creditor permits a consumer to shop but fails to provide the list required by § 1026.19(e)(1)(vi)(C) or the list does not comply with the requirements of § 1026.19(e)(1)(vi)(B) and (C). As discussed in the section-by-section analysis of § 1026.19(e)(3)(iii), after considering the comments, the Bureau is revising comment 19(e)(3)(iii)-2. Final comment 19(e)(3)(iii)-2 provides that good faith is determined under § 1026.19(e)(3)(ii) even if the creditor fails to issue the list required by § 1026.19(e)(1)(vi)(C), as long as the fee for the settlement service required by the creditor is paid to an unaffiliated third

[52] CFPB Webinar, *TILA-RESPA Integrated Disclosure, Part 5 — Implementation Challenges and Questions* (May 26, 2015), *available at* https://consumercomplianceoutlook.org/outlook-live/2015/tila-respa-integrated-disclosures-rule-5/.

party and the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A). These revisions do not extinguish the obligation to comply with § 1026.19(e)(1)(vi)(B) and (C) if the creditor permits the consumer to shop. For example, although the good faith determination under § 1026.19(e)(3)(ii) may apply to settlement services even when a creditor fails to issue the written list of providers, the creditor is still in violation of § 1026.19(e)(1)(vi)(C) for failure to comply with the requirements to issue a written list of providers.

The Bureau is adopting new comment 19(e)(3)(ii)-6 to conform to final comment 19(e)(3)(iii)-2 and thereby clarify the interplay between the shopping requirements under § 1026.19(e)(1)(vi) and the good faith determination under § 1026.19(e)(3)(ii) and (iii). Comment 19(e)(3)(ii)-6 provides that when a creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C), good faith is determined under § 1026.19(e)(3)(ii), unless the settlement service provider is the creditor or an affiliate of the creditor, in which case good faith is determined under § 1026.19(e)(3)(i). In conformity with final comment 19(e)(1)(vi)-1, final comment 19(e)(3)(ii)-6 also provides that whether the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances. In addition, the Bureau is revising comment 19(e)(3)(ii)-1.i to conform with new comment 19(e)(3)(ii)-6. Final comment 19(e)(3)(ii)-1.i explains that § 1026.19(e)(3)(ii) permits limited increases for fees paid to an unaffiliated third party if the creditor permitted the consumer to shop for the third-party service, consistent with § 1026.19(e)(1)(vi)(A).

The Bureau is finalizing as proposed, with minor stylistic changes, the portion of comment 19(e)(3)(ii)-2 that relates to an individual charge omitted from the Loan Estimate and then imposed at consummation. As finalized, comment 19(e)(3)(ii)-2 provides that, under

§ 1026.19(e)(3)(ii)(A), whether an individual estimated charge subject to § 1026.19(e)(3)(ii) is in good faith depends on whether the sum of all charges subject to § 1026.19(e)(3)(ii) increases by more than 10 percent, regardless of whether a particular charge increases by more than 10 percent. This is true even if an individual charge was omitted from the estimate provided under § 1026.19(e)(1)(i) and then imposed at consummation. Thus, final comment 19(e)(3)(ii)-2 provides flexibility when disclosing individual fees by focusing on aggregate amounts. The Bureau is also finalizing, as proposed, the revisions to restructure comment 19(e)(3)(ii)-2 by separating the examples in the comment into subparagraphs i. and ii. and other revisions to enhance clarity.

As discussed above, some commenters asked the Bureau to clarify whether a creditor may issue a revised written list of providers. As Bureau staff noted in an informal webinar,[53] a revised written list of providers may be issued when a settlement service is added as a result of a reason provided for under § 1026.19(e)(3)(iv). Whether or not a creditor issues a revised written list of providers, in accordance with final comment 19(e)(3)(ii)-6, if the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A), good faith is determined under § 1026.19(e)(3)(ii), unless the settlement service provider is the creditor or an affiliate of the creditor, in which case good faith is determined under § 1026.19(e)(3)(i). Whether the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances.

As for comments regarding the § 1026.19(e)(3) good faith determination if a creditor has not complied with § 1026.19(e)(1)(vi) because of a typographical error or has used inconsistent

[53] *Id.*

terminology between disclosures, the Bureau is not finalizing its proposal to provide that noncompliance with § 1026.19(e)(1)(vi)(B) and (C) would subject a settlement service to zero tolerance under § 1026.19(e)(3)(i). As discussed above, many commenters focused on noncompliance with § 1026.19(e)(1)(vi)(C) and remedies for resolving inadvertent errors and omissions on the written list of providers. The Bureau believes new comment 19(e)(3)(ii)-6 addresses the concern regarding the omission of a required settlement service from the written list of providers. Relatedly, commenters requested clarification regarding the applicable good faith determination when an untimely written list of providers is issued. Consistent with new comment 19(e)(3)(ii)-6, the creditor may still comply with § 1026.19(e)(3)(ii), depending (in part) on whether the creditor—based on all relevant facts and circumstances—permitted the consumer to shop consistent with § 1026.19(e)(1)(vi)(A).

19(e)(3)(iii) Variations Permitted for Certain Charges

Charges Paid to the Creditor or Affiliates of the Creditor

The Bureau's Proposal

Section 1026.19(e)(3)(iii) states that certain charges are in good faith for purposes of § 1026.19(e)(1)(i) if they are consistent with the best information reasonably available, regardless of whether the amounts paid by the consumer exceed the amounts disclosed under § 1026.19(e)(1)(i). Section 1026.19(e)(3)(iii) applies to the following five categories of charges: (A) prepaid interest; (B) property insurance premiums; (C) amounts placed into an escrow, impound, reserve, or similar account; (D) charges paid to third-party service providers selected by the consumer consistent with § 1026.19(e)(1)(vi)(A) that are not on the list provided under § 1026.19(e)(1)(vi)(C); and (E) charges paid for third-party services not required by the creditor. The Bureau proposed to amend § 1026.19(e)(3)(iii) to provide that, for purposes of

§ 1026.19(e)(1)(i), good faith is determined under § 1026.19(e)(3)(iii) for all five of the categories of charges listed therein, even if such charges are paid to affiliates of the creditor, so long as the charges are bona fide. In addition, proposed comment 19(e)(3)(iii)-4 would have clarified that, to be bona fide for purposes of § 1026.19(e)(3)(iii), charges must be lawful and for services that are actually performed.

Comments Received

Industry commenters, including creditors, vendors, trade associations, a title insurance underwriter, a secondary market investor, and an individual compliance professional, supported the provision in proposed § 1026.19(e)(3)(iii) that good faith is determined under § 1026.19(e)(3)(iii) for all five of the categories of charges listed therein, even if such charges are paid to affiliates of the creditor. An individual attorney requested that the Bureau further revise § 1026.19(e)(3)(iii) to explicitly include charges paid to mortgage broker affiliates. A secondary market investor requested that the Bureau provide specific examples for § 1026.19(e)(3)(iii).

Some industry commenters expressed concerns with the provision in proposed § 1026.19(e)(3)(iii) that excludes charges if they are not bona fide. A creditor, trade association, and title insurance underwriter stated that the proposed bona fide limitation adds confusion and uncertainty. A creditor asserted that the proposed bona fide limitation is unnecessary. A title insurance underwriter questioned whether including a bona fide limitation for proposed § 1026.19(e)(3)(iii) suggests that charges are not required to be bona fide for purposes of § 1026.19(e)(3)(i) and (ii). The title insurance underwriter and a trade association also stated

that the proposed bona fide limitation can cause confusion as appearing to be in conflict with the holding in *Freeman v. Quicken Loans, Inc.*[54] The trade association further stated that "bona fide" is a term of art for purposes of analyzing claims under RESPA section 8; the Court in *Freeman* held that the RESPA section 8(b) fee-splitting prohibition does not, in the absence of fee-splitting, prohibit charging fees for which no services were provided; and, given the holding in *Freeman*, some industry members may be confused by use of the term "bona fide" in proposed § 1026.19(e)(3)(iii) to exclude charges for services that are not actually performed. The trade association suggested that the Bureau remove the term "bona fide" in proposed § 1026.19(e)(3)(iii) and instead replace it with the phrase "for services actually performed."

Consumer group commenters did not object to the provision in proposed § 1026.19(e)(3)(iii) that good faith is determined under § 1026.19(e)(3)(iii) for all five of the categories of charges listed therein, even if such charges are paid to affiliates of the creditor. However, consumer group commenters expressed concerns with comment 19(e)(3)(iii)-4 defining "bona fide" charges as being lawful charges for services that are actually performed. Those commenters stated that, if the Bureau intends for that definition to be limited to determining good faith for purposes of § 1026.19(e)(1)(i), then the Bureau should expressly state such limitation in the text of § 1026.19(e)(3)(iii) or its associated commentary. However, if the Bureau intends for comment 19(e)(3)(iii)-4 to also define the term "bona fide" for other purposes in Regulation Z, then consumer group commenters stated that the definition should exclude any inflation or padding of charges beyond the amount of the charge actually incurred and

[54] 132 S.Ct. 2034 (2012).

unreasonable charges (*i.e.*, charges exceeding the market rate for equivalent services in the local community or any limits set by law).

Regarding implementation costs, a vendor group supported proposed § 1026.19(e)(3)(iii) and noted it would require some moderate reprogramming. Regarding an implementation period, a creditor requested that proposed § 1026.19(e)(3)(iii) become effective retroactively to address uncertainty and legal risk.

The Final Rule

For the reasons discussed below, the Bureau is adopting § 1026.19(e)(3)(iii) and comment 19(e)(3)(iii)-4 substantially as proposed but with certain modifications. Specifically, in part in response to commenters' concerns, the bona fide determination in comment 19(e)(3)(iii)-4, as finalized, is expressly limited to determining good faith for purposes of § 1026.19(e)(1)(i). That limitation is consistent with the Bureau's stated intent in the proposal.[55] For example, the bona fide determination in comment 19(e)(3)(iii)-4 is distinct from the broader finance charge determination under § 1026.4(c)(7) (*i.e.*, whether certain fees are bona fide and reasonable in amount) and the points and fees determination under § 1026.32(b) (*e.g.*, the bona fide discount point definition requires, among other things, a calculation that is consistent with established industry practices). Final § 1026.19(e)(3)(iii) and comment 19(e)(3)(iii)-4 also clarify that for purposes of § 1026.19(e)(1)(i), good faith is determined under § 1026.19(e)(3)(iii) for categories of charges listed therein, even if such charges are paid to the creditor, so long as the charges are bona fide. The Bureau believes that, as is the case for charges covered under current

[55] 81 FR 54317, 54332 (Aug. 15, 2016).

§ 1026.19(e)(3)(ii), charges paid to a creditor generally should be treated the same way for purposes of determining good faith as is a charge paid to an affiliate of a creditor.

The Bureau declines to make any further changes requested by commenters regarding § 1026.19(e)(3)(iii) or comment 19(e)(3)(iii)-4. The Bureau concludes that it is not necessary to revise § 1026.19(e)(3)(iii) to explicitly include charges paid to mortgage broker affiliates because, unlike creditor affiliates, mortgage broker affiliates are not explicitly noted in current § 1026.19(e)(3)(iii). Good faith is determined under § 1026.19(e)(3)(i) unless a charge otherwise satisfies the conditions of § 1026.19(e)(3)(ii) or (iii). With respect to a commenter's request for specific examples regarding § 1026.19(e)(3)(iii), guidance can be found in the commentary accompanying § 1026.19(e)(3)(iii).

Regarding commenters' concern that there is confusion and uncertainty associated with the provision in § 1026.19(e)(3)(iii) that excludes charges if they are not bona fide, the Bureau believes that comment 19(e)(3)(iii)-4 provides sufficient clarity that, to be bona fide for purposes of § 1026.19(e)(3)(iii), charges must be lawful and for services that are actually performed. The Bureau believes that the bona fide provision in § 1026.19(e)(3)(iii) will limit any potential consumer harm associated with permitting variations for charges within the five categories paid to the creditor or to affiliates of the creditor. In response to the commenter's question, such a bona fide limitation is not necessary in § 1026.19(e)(3)(i) and (ii) because those provisions present less risk of consumer harm.

Regarding commenters' citation to the Supreme Court's interpretation of RESPA section 8(b) in *Freeman v. Quicken Loans, Inc.*, the Bureau is not relying on RESPA section 8(b) to adopt § 1026.19(e)(3)(iii), as clarified by comment 19(e)(3)(iii)-4. Rather, as stated in the proposal, the Bureau is adopting § 1026.19(e)(3)(iii), as clarified by comment 19(e)(3)(iii)-4,

pursuant to its authority to prescribe standards for good faith estimates under TILA section 128 and RESPA section 5, as well as its authority under TILA sections 105(a), RESPA section 19(a), section 1032(a) of the Dodd-Frank Act, and, for residential mortgage loans, section 1405(b) of the Dodd-Frank Act.[56]

In response to comments regarding the effective date and implementation period, as discussed in part VI below, the rule will be effective 60 days from publication in the *Federal Register*, but there will be an optional compliance period in effect until October 1, 2018.

Certain Service Providers Selected by the Consumer

The Bureau's Proposal

Currently, comment 19(e)(3)(iii)-2 explains that § 1026.19(e)(3)(iii)(D) applies when (1) a creditor permits the consumer to shop, consistent with § 1026.19(e)(1)(vi)(A), for a settlement service it requires; (2) the creditor provides the list required under § 1026.19(e)(1)(vi)(C); and (3) the consumer selects a service provider that is not on that list to perform the service. If these conditions are met, the actual estimate of a settlement service need not be compared to the original estimate for purposes of determining good faith under § 1026.19(e)(3). Comment 19(e)(3)(iii)-2 also provides that an estimate or lack of an estimate must be based on the best information reasonably available at the time the disclosures are provided. Although amounts disclosed pursuant to § 1026.19(e)(3)(iii) may vary from the original estimates, the original estimates must not be unreasonably low. Lastly, comment 19(e)(3)(iii)-2 provides that, if the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C), then good faith is determined under

[56] 81 FR 54317, 54331 (Aug. 15, 2016).

§ 1026.19(e)(3)(ii) instead of § 1026.19(e)(3)(iii). This is true unless the provider selected by the consumer is an affiliate of the creditor, in which case good faith is determined under § 1026.19(e)(3)(i).

Section 1026.19(e)(1)(vi) sets forth the requirements creditors must comply with if a creditor permits a consumer to shop for a settlement service it requires. Among other things, the creditor must identify the required settlement services for which the consumer is permitted to shop and identify an available provider of that service.[57] Section 1026.19(e)(3)(ii) sets forth the requirements for the 10 percent tolerance category, which includes the requirement that the creditor permit the consumer to shop, consistent with § 1026.19(e)(1)(vi), for required settlement services. If a creditor permits a consumer to shop for a required settlement service, but fails to provide a written list of providers, the creditor has not complied with § 1026.19(e)(1)(vi)(C). The Bureau proposed to revise comment 19(e)(3)(iii)-2 to provide that good faith is determined under § 1026.19(e)(3)(i), regardless of the provider selected by the consumer, if a creditor fails to issue the list required under § 1026.19(e)(1)(vi)(C) or if the creditor does not otherwise comply with the requirements under § 1026.19(e)(1)(vi)(B) and (C).

Comments Received

Several industry commenters, including banks, credit unions, settlement agents, and document management and compliance software companies addressed the Bureau's proposed revisions to comment 19(e)(3)(ii)-2 in tandem with comment 19(e)(3)(iii)-2 to the extent that the proposed revisions in these comments mirrored each other. As stated above in the discussion of

[57] Section 1026.19(e)(1)(vi)(B) requires the creditor to identify required settlement services for which the consumer is permitted to shop on the Loan Estimate in accordance with § 1026.37(f)(3). Section 1026.19(e)(1)(vi)(C) requires the creditor to identify settlement service providers for required settlement services for which a consumer is permitted to shop.

comment 19(e)(3)(ii)-2, these commenters requested that the Bureau define noncompliance and narrow the scope of noncompliance with § 1026.19(e)(1)(vi)(B) and (C). Commenters were generally concerned that inadvertent mistakes and typographical errors could be considered noncompliance under a strict interpretation of the proposed amendment. One commenter asked the Bureau to clarify whether a creditor's use of inconsistent terminology between the Loan Estimate, the written list of providers, and the Closing Disclosure would be considered noncompliance.

Several commenters asked that the Bureau provide a mechanism for issuing a revised or corrected written list of providers as long as the consumer would still have time to shop. Most industry commenters were opposed to the proposed revision to comment 19(e)(3)(ii)-2 that would have changed the tolerance threshold for settlement services not provided on the written list of providers. Three commenters agreed with the Bureau's proposed revision. Commenters asked the Bureau to consider the approach taken by the Department of Housing and Urban Development (HUD) in the 2008 RESPA Final Rule, which commenters asserted, used the 10 percent tolerance threshold for settlement services when the written list of providers was not issued.[58] In general, commenters asserted that the proposed revision to comment 19(e)(3)(ii)-2 would increase compliance cost and require software and system reprogramming and staff retraining. Other commenters stated that no industry or consumer benefit would be achieved by the proposed revision. Some commenters stated that creditors would be required to provide greater amounts of tolerance refunds to consumers and the increased cost imposed on creditors

[58] The Bureau notes that the 2008 RESPA Final Rule actually provides that settlement services are subject to 10 percent tolerance unless the borrower selects a provider other than one identified by the loan originator in which case these fees are not subject to any tolerance. 73 FR 14029, 14094 (Mar. 14, 2008).

would ultimately be paid by consumers. One commenter stated that the proposed revision did not take into account the potential that a consumer actually shopped for settlement services. A state trade association commenter representing credit unions stated the Bureau should exempt credit unions from the requirement to provide the written list of providers because requiring credit unions to provide the written list of providers is an unnecessary burden that exposes credit unions to compliance risk even when credit unions do not require the use of any particular settlement service provider. In general, comments regarding the implementation date for the proposed revision ranged from six to twelve months.

The Final Rule

For the reasons discussed below, the Bureau is not finalizing comment 19(e)(3)(iii)-2 as proposed but is instead revising it to clarify the applicable good faith determination when the written list of providers is not issued. Comment 19(e)(3)(iii)-2 continues to provide that, if the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C), good faith is determined under § 1026.19(e)(3)(ii) instead of § 1026.19(e)(3)(iii) unless the settlement service provider is an affiliate of the creditor in which case good faith is determined pursuant to § 1026.19(e)(3)(i). As finalized, comment 19(e)(3)(iii)-2 clarifies that whether the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances.

As discussed above, several commenters asserted that requiring the good faith determination under § 1026.19(e)(3)(i) (rather than the good faith analysis under § 1026.19(e)(3)(ii)) when a creditor does not provide the written list of providers would, in summary, introduce uncertainty and significantly increase compliance cost and burden. In addition, many commenters presented concerns about the proposed revision regarding

compliance with the provisions of § 1026.19(e)(1)(vi)(B) and (C). These comments persuaded the Bureau that the proposed revisions could provoke confusion rather than provide greater clarity about the requirements under § 1026.19(e)(3).

As explained in the TILA-RESPA Final Rule, the Bureau believes that information asymmetry between the creditor and the consumer is pervasive in the mortgage origination process and that the disclosures on the Loan Estimate and written list of providers play an important role in partially correcting that asymmetry. The disclosures provided related to settlement services are an important factor in determining whether a creditor's estimates were disclosed in good faith. The Bureau believes that the disclosures, presented on the Loan Estimate and the written list of providers, inform consumers of their ability to shop and promote a meaningful opportunity to shop for the required settlement services.

Currently, comment 19(e)(3)(iii)-2 provides that the good faith determination under § 1026.19(e)(3)(ii) applies when a creditor does not issue a written list of providers but the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A), unless the settlement service provider is an affiliate of the creditor, in which case good faith is determined under § 1026.19(e)(3)(i).

As part of the good faith determination under § 1026.19(e)(3)(ii), the creditor must permit the consumer to shop for a third-party service. Comment 19(e)(1)(vi)-1 as finalized, and as cross-referenced by final comments 19(e)(3)(ii)-6 and 19(e)(3)(iii)-2, clarifies that whether a creditor permits a consumer to shop consistent with § 1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances.

The Bureau believes that, as finalized, the clarification provided under revised comment 19(e)(3)(iii)-2 is a balanced approach to preclude the weakening of the consumer protection

interests implicit in the written list of providers while avoiding a significant increase in compliance cost and administrative burden. Although the Bureau is not finalizing the proposed revision to comment 19(e)(3)(iii)-2 regarding compliance with § 1026.19(e)(1)(vi)(B) and (C), the Bureau emphasizes that the good faith determination under § 1026.19(e)(3)(ii) or (iii) for third-party service charges requires compliance with § 1026.19(e)(1)(vi)(A), which is determined based on all the relevant facts and circumstances per final comments 19(e)(1)(vi)-1, 19(e)(3)(ii)-6, and 19(e)(3)(iii)-2.

Regarding the § 1026.19(e)(3) good faith determination, as discussed above some commenters were concerned that typographical errors regarding § 1026.19(e)(1)(vi)(B) and (C) could be considered a violation of § 1026.19(e)(3)(ii) and subject certain settlement services to zero tolerance if the error hinders the consumer's ability to shop. As noted in the section-by-section analysis of § 1026.19(e)(3)(ii) above, typographical errors regarding a settlement service under § 1026.19(e)(1)(vi)(B) and (C) do not subject the charges for such service to the zero percent tolerance category when determining good faith, unless the error interferes with the consumer's ability to shop.

In response to commenters that asked the Bureau to exempt credit unions from providing the written list of providers because they do not require the consumer to use a particular settlement service provider, the Bureau declines to do so. The written list of providers and other requirements under § 1026.19(e)(1)(vi) only apply to settlement services for which a creditor permits a consumer to shop and provide helpful information to consumers to partially correct for the information asymmetry between the creditor and the consumer.

19(e)(3)(iii)(E)

Under § 1026.19(e)(3)(iii)(E) estimates of charges paid for third-party services not required by the creditor are in good faith if they are consistent with the best information reasonably available to the creditor at the time they are disclosed, regardless of whether the amount paid by the consumer exceeds the amount disclosed under § 1026.19(e)(1)(i). The Bureau noted, in the proposal, its understanding that there may be some uncertainty as to whether real property taxes are included in this category.

The supplementary information to the TILA-RESPA Final Rule erroneously stated that property taxes and other fees were subject to tolerance under § 1026.19(e)(3)(i). In February 2016, the Bureau corrected this typographical error and clarified that property taxes (and property insurance premiums, homeowner's association dues, condominium fees, and cooperative fees) are not subject to tolerances, whether or not placed into an escrow or impound account.[59]

The Bureau proposed to revise § 1026.19(e)(3)(iii)(E) and comment 19(e)(3)(iii)-3 to make explicit that an estimate of property taxes is in good faith if it is consistent with the best information reasonably available to the creditor at the time it is disclosed, regardless of whether the amount paid by the consumer exceeds the amount disclosed under § 1026.19(e)(1)(i). The Bureau also proposed revisions to comment 19(e)(3)(iii)-3, which would provide an illustrative example for disclosing property taxes under § 1026.19(e)(3)(iii)(E).

In general, commenters representing various industry stakeholders supported the proposed revisions to § 1026.19(e)(3)(iii)(E) and comment 19(e)(3)(iii)-3. A commenter

[59] 81 FR 7032 (Feb. 10, 2016).

representing a mortgage finance company asked the Bureau to provide specific guidance on the disclosure of property taxes under § 1026.19(e)(3)(iii)(E) for new construction, refinance, and purchase transactions. A commenter representing banks asked the Bureau to define the good faith standard under § 1026.19(e)(3)(iii)(E) broadly to prevent industry confusion. A commenter representing a mortgage company supported the revisions but asked that the Bureau consider changing the good faith determination of tolerance for appraisal cost. The commenter asserted that appraiser's fees should not be subject to zero tolerance because lenders may not know what an appraiser will charge.

The Bureau is finalizing, as proposed, the revisions to § 1026.19(e)(3)(iii)(E) and comment 19(e)(3)(iii)-3. In regard to the commenter requesting specific guidance on the disclosure of property taxes for new construction and refinance transactions, the Bureau notes that the good faith determination under § 1026.19(e)(3)(iii)(E) applies to property taxes whether the loan is for new construction or to refinance a loan. The original estimated charge, or lack of an estimated charge for property taxes, complies with § 1026.19(e)(3)(iii)(E) if the estimate for property taxes is consistent with the best information reasonably available to the creditor at the time it is disclosed.

As discussed above, a commenter asked the Bureau to define or interpret good faith under § 1026.19(e)(3)(iii)(E) broadly to stave off industry confusion. The Bureau believes that the explanation of the good faith determination under § 1026.19(e)(3)(iii)(E) is sufficient. The Bureau notes that the good faith determination of an estimate under § 1026.19(e)(3)(iii)(E) is based on the best information reasonably available to the creditor at the time it is disclosed. In addition, the Bureau illustrates this principle with several examples under the comments 19(e)(3)(iii)-1 through -3. Revised comment 19(e)(3)(iii)-3 as finalized under this rule will

explain that a creditor complies with the requirements under § 1026.19(e)(3)(iii)(E) unless the creditor, contrary to the best information reasonably available at the time the disclosures are made, does not provide an estimate or an unreasonably low estimate.

In regard to the comment requesting the Bureau to reconsider the good faith tolerance determination for appraisal fees, the Bureau declines to address this issue in the final rule. The Bureau notes that the disclosure of the appraisal fee must be based on the best information reasonably available at the time the disclosure is provided to the consumer.

19(e)(3)(iv) Revised Estimates

The Bureau's Proposal

Section 1026.19(e)(3)(iv) provides that, for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), a creditor may use a revised estimate of a charge instead of the estimate of the charge originally disclosed on the Loan Estimate (*i.e.*, the creditor may reset the applicable tolerance) if the revision is due to any of the reasons stated in § 1026.19(e)(3)(iv)(A) through (F). Section 1026.17(c)(2)(i) requires that any disclosures provided to the consumer must be based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer. Proposed comments 19(e)(3)(iv)-2 and -4 would have clarified that § 1026.19(e)(3)(iv) does not prohibit the creditor from issuing revised disclosures for informational purposes, even in situations where the creditor is not resetting tolerances for any of the reasons stated in § 1026.19(e)(3)(iv)(A) through (F). Proposed comment 19(e)(3)(iv)-5 would have clarified that, regardless of whether a creditor issues a revised Loan Estimate to reset tolerances or simply for informational purposes, § 1026.17(c)(2)(i) requires that any disclosures on the revised Loan Estimate must be based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer.

Comments Received

Industry commenters, including vendors, a creditor, and an individual compliance professional, supported the clarification in proposed comments 19(e)(3)(iv)-2 and -4. However, consumer group commenters opposed permitting revised disclosures for informational purposes in situations where the creditor is not resetting tolerances for any of the reasons stated in § 1026.19(e)(3)(iv)(A) through (F). Consumer group commenters asserted that such revised disclosures may lead consumers to experience information overload; consumers already receive similar information on the Closing Disclosure no later than three business days before consummation; and consumers will not understand the difference between revised Loan Estimates for resetting tolerances and those simply for informational purposes. Consumer group commenters also recommended that all disclosures include a statement, at the top of the page, directing the consumer to keep any and all versions of the disclosures; and a notation, on the first page, indicating the quantity of any prior Loan Estimates provided to the consumer.

Several industry commenters, including vendors and an individual compliance professional, supported the clarification in proposed comment 19(e)(3)(iv)-5. However, other industry commenters opposed requiring that, if a creditor opts to provide a revised Loan Estimate, any disclosures on the revised Loan Estimate must be based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer. A secondary market investor expressed concern that the requirement increases the likelihood of disclosure errors. Trade associations and a creditor stated that some vendors are not currently in compliance with the requirement and their systems will need substantial reprogramming. Trade associations also expressed their belief that there would be no significant consumer injury if creditors were excused from updating disclosures on revised Loan Estimates based on the best

information reasonably available. A creditor requested that industry be given an implementation period of at least 180 days if the Bureau finalizes proposed comment 19(e)(3)(iv)-5, while a vendor group stated that reprogramming for some vendors could take up to 12 months.

Several industry commenters also sought additional clarifications regarding revising the Loan Estimate based on the best information reasonably available. A trade association requested further clarification as to how the requirement noted in proposed comment 19(e)(3)(iv)-5 comports with the creditor discretion noted in proposed comment 19(e)(3)(iv)-4. Two creditors requested clarification as to what the impact is on tolerance baselines when a creditor decreases an estimated charge on a revised Loan Estimate or Closing Disclosure; an individual attorney requested similar clarification while suggesting that the Bureau's current small entity compliance guide indicates that such decreases do not impact tolerance baselines.

The Final Rule

The Bureau is adopting as proposed the amendments to comment 19(e)(3)(iv)-2 and new comment 19(e)(3)(iv)-4 and is adopting new comment 19(e)(3)(iv)-5 substantially as proposed. As finalized, comments 19(e)(3)(iv)-2 and -4 are consistent with current comment 19(e)(3)(iv)(A)-1.ii, which states that § 1026.19(e)(3)(iv) does not prohibit the creditor from issuing revised disclosures for informational purposes, even in situations where the creditor is not resetting tolerances for any of the reasons stated in § 1026.19(e)(3)(iv)(A) through (F). The Bureau declines to make revisions that would contradict current comment 19(e)(3)(iv)(A)-1.ii. The Bureau concludes that the concerns expressed by consumer group commenters do not warrant prohibiting consumers from receiving the best information reasonably available, even if consumers will later receive a Closing Disclosure. Regarding commenters' assertion that consumers will not understand the difference between revised Loan Estimates for resetting

tolerances and those simply for informational purposes, the Bureau notes that the Loan Estimate form intentionally has been designed, first and foremost, as a means of providing consumers with the best information reasonably available. Therefore, in many instances, tracking legal compliance will require reviewing not just the most recent Loan Estimate but also prior versions. With respect to the comments recommending that creditors be required to add an additional statement and notation on the Loan Estimate, the Bureau notes that § 1026.37(a)(2) already requires that all Loan Estimates include the statement "Save this Loan Estimate to compare with your Closing Disclosure." The Bureau declines to mandate the additional disclosures requested, which would impose additional regulatory implementation costs.

Comment 19(e)(3)(iv)-5, as finalized, includes an example stating that, if the creditor issues revised disclosures reflecting a new rate lock extension fee for purposes of determining good faith under § 1026.19(e)(3)(i), other charges unrelated to the rate lock extension must be reflected on the revised disclosures based on the best information reasonably available to the creditor at the time the revised disclosures are provided. As finalized, comment 19(e)(3)(iv)-5, including that example, is consistent with longstanding § 1026.17(c)(2)(i), as well as current comments 19(e)(1)(i)-1 and 37-1, which require that disclosures provided to the consumer must be based on the best information reasonably available to the creditor. The Bureau declines to make revisions that would contradict current § 1026.17(c)(2)(i) and current comments 19(e)(1)(i)-1 and 37-1. The Bureau concludes that commenters' concerns do not warrant consumers receiving Loan Estimates that are not based on the best information reasonably available. Regarding a commenter's request for further clarification as to how the requirement noted in proposed comment 19(e)(3)(iv)-5 comports with the creditor discretion noted in proposed comment 19(e)(3)(iv)-4, comment 19(e)(3)(iv)-4 notes that creditors may, at their

option, issue a revised Loan Estimate for informational purposes even when creditors are not otherwise required to do so; but, if a creditor opts to do so, comment 19(e)(3)(iv)-5, consistent with § 1026.17(c)(2)(i) and comments 19(e)(1)(i)-1 and 37-1, requires the Loan Estimate to be based on the best information reasonably available to the creditor at the time it is provided to the consumer.

Regarding commenters' request for clarification as to what the impact is on tolerance baselines when a creditor decreases an estimated charge on a revised Loan Estimate or Closing Disclosure, current § 1026.19(e)(3)(i) states that, except as otherwise provided in § 1026.19(e)(3)(ii) through (iv), an estimated closing cost on the Loan Estimate is in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed. Moreover, for purposes of determining good faith, § 1026.19(e)(3)(iv) states that in certain circumstances a creditor may use a revised estimate of a charge instead of the estimate of the charge originally disclosed—but the rule does not require the creditor to use a revised estimate for purposes of determining good faith. Thus, if a creditor decreases an estimated charge on a revised Loan Estimate or Closing Disclosure, the creditor is not required to use the decreased estimate for purposes of determining good faith; the creditor may determine good faith by comparing the charge paid by or imposed on the consumer versus the amount originally disclosed.

In response to comments regarding the effective date and implementation period, as discussed in part VI below, the rule will be effective 60 days from publication in the *Federal Register*, but there will be an optional compliance period in effect until October 1, 2018.

19(e)(3)(iv)(D) Interest Rate Dependent Charges

The Bureau's Proposal

In circumstances where a creditor provides an initial Loan Estimate disclosing an interest rate without a rate lock agreement in place, § 1026.19(e)(3)(iv)(D) requires the creditor to provide a revised Loan Estimate to the consumer no later than three business days after the date the interest rate is subsequently locked. Section 1026.19(e)(4)(ii) prohibits a creditor from providing a revised Loan Estimate on or after the date on which the creditor provides the Closing Disclosure. Consistent with § 1026.19(e)(4)(ii), the Bureau proposed to add new comment 19(e)(3)(iv)(D)-2 to clarify that the creditor may not provide a revised Loan Estimate on or after the date on which the creditor provides the Closing Disclosure, even if the interest rate is locked on or after the date on which the creditor provides the Closing Disclosure. In addition, new comment 19(e)(3)(iv)(D)-2 would have also noted that the creditor must provide a corrected Closing Disclosure if the disclosures on the previous Closing Disclosure become inaccurate, in accordance with the existing requirements of § 1026.19(f)(2). The Bureau also proposed technical revisions to existing comment 19(e)(3)(iv)(D)-1.

Comments Received

Some industry commenters stated that new comment 19(e)(3)(iv)(D)-2 clarified that a revised Loan Estimate must be provided to the consumer when the initial Loan Estimate disclosed an interest rate without a rate lock agreement, but the interest rate is subsequently locked. Other industry commenters sought additional clarity on whether a revised Loan Estimate was required in such a situation if the terms and charges associated with the loan would not change on the revised Loan Estimate, and therefore argued there is no basis to require a revised Loan Estimate where there are no changes in the information disclosed.

Other commenters addressed the statement in proposed new comment 19(e)(3)(iv)(D)-2 that the creditor must provide a corrected Closing Disclosure if the disclosures on the previous Closing Disclosure become inaccurate, in accordance with the requirements of § 1026.19(f)(2). Some industry commenters sought more clarity on what a creditor must do when the interest rate is subsequently locked by a rate lock agreement after the Closing Disclosure is issued. A secondary market participant commenter also stated that a creditor should not be required to issue a revised Closing Disclosure when there are no changes made to the interest rate or other terms.

The Final Rule

For the reasons discussed below, the Bureau is adopting the technical revisions to existing comment 19(e)(3)(iv)(D)-1 as proposed and is adopting new comment 19(e)(3)(iv)(D)-2 as proposed, with a modification for clarity. Commenters that expressed a need for clarification in relation to proposed new comment 19(e)(3)(iv)(D)-2 in effect argued that § 1026.19(e)(3)(iv)(D) should not require the disclosure of a revised Loan Estimate if the terms and charges disclosed have not changed. As noted above, § 1026.19(e)(3)(iv)(D) explicitly requires the creditor to provide a revised Loan Estimate when the initial Loan Estimate did not disclose an interest rate subject to a rate lock agreement, even if the terms and charges disclosed are the same. As noted in the 2012 TILA-RESPA Proposal, the disclosures on the initial Loan Estimate related to the interest rate should be able to fluctuate on subsequent Loan Estimates if the consumer's rate was not set on the initial Loan Estimate, but revised disclosures should be

provided when the consumer's interest rate is later set.[60] The Bureau's concern was, and continues to be, that, absent a rate lock agreement, the terms and charges of the loan as disclosed on the initial Loan Estimate are more likely to change, as the consumer would only be able to rely on the interest rate related charges and terms on the Loan Estimate when the rate has been locked. When a revised Loan Estimate is provided as required by § 1026.19(e)(3)(iv)(D), the rate lock information disclosed pursuant to § 1026.37(a)(13)(i) must be updated to reflect the expiration date of the interest rate disclosed, regardless of any changes to the disclosed interest rate or interest rate-related charges. Once the interest rate is subject to a rate lock agreement, § 1026.19(e)(3)(iv)(D) does not subsequently require the disclosure of a revised Loan Estimate. As discussed above, proposed new comment 19(e)(3)(iv)(D)-2 included an explicit cross-reference to the requirement in § 1026.19(f)(2) for a creditor to provide a corrected Closing Disclosure if the disclosures on the previous Closing Disclosure become inaccurate. The Bureau is adopting new comment 19(e)(3)(iv)(D)-2 with this additional cross-reference to provide clarity. To provide guidance to commenters that sought clarity on whether a corrected Closing Disclosure is required if the interest rate becomes subject to a rate lock agreement after the initial Closing Disclosure has been provided to the consumer, such a corrected Closing Disclosure is required only when the disclosures have become inaccurate, pursuant to § 1026.19(f)(2). Notably, information disclosed on the Loan Estimate under § 1026.37(a)(13) concerning the terms of the rate lock agreement are not required on the Closing Disclosure under § 1026.38, therefore a subsequent rate lock agreement by itself would not require a corrected Closing Disclosure unless the charges and terms become inaccurate.

[60] 2012 TILA-RESPA Proposal, 77 FR 51116, 51173 (Aug. 23, 2012).

19(e)(3)(iv)(E) Expiration

Section 1026.19(e)(3)(iv)(E) provides that, for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), a creditor may use a revised estimate of a charge instead of the estimate of the charge originally disclosed on the Loan Estimate (*i.e.*, the creditor may reset the applicable tolerance) if the consumer indicates an intent to proceed with the transaction more than 10 business days after the Loan Estimate is provided under § 1026.19(e)(1)(iii).

To reduce uncertainty, the Bureau proposed to revise § 1026.19(e)(3)(iv)(E) and to add new comment 19(e)(3)(iv)(E)-2 to clarify that, if a creditor voluntarily extends the period disclosed under § 1026.37(a)(13)(ii) to a period greater than 10 business days, that longer time period becomes the relevant time period for purposes of using revised estimates under § 1026.19(e)(3)(iv)(E). Proposed revisions to § 1026.19(e)(3)(iv)(E) permitted a creditor to use revised estimates under § 1026.19(e)(3)(iv) when the consumer indicates an intent to proceed with the transaction more than 10 business days, or more than any additional number of days specified by the creditor before the offer expires, after the disclosures required under § 1026.19(e)(1)(i) are provided. Proposed new comment 19(e)(3)(iv)(E)-2 stated that, if the creditor establishes a period greater than 10 business days after the disclosures were provided (or subsequently extends it to such a longer period), the longer time period becomes the relevant time period for purposes of § 1026.19(e)(3)(iv)(E). Proposed comment 19(e)(3)(iv)(E)-2 further stated that a creditor establishes such a period greater than 10 business days by communicating the greater time period to the consumer, including through oral communication. While not discussed in the section-by-section analysis of § 1026.19(e)(3)(iv)(E) in the proposal, the Bureau also proposed minor stylistic changes to existing comment 19(e)(3)(iv)(E)-1.

Commenters generally supported revised § 1026.19(e)(3)(iv)(E) and new comment 19(e)(3)(iv)(E)-2, with some concerns related to the proper disclosure of the expiration period on the Loan Estimate. These concerns are discussed in the section-by-section analysis of § 1026.37(a)(13), below. Accordingly, the Bureau is adopting, as proposed, revised § 1026.19(e)(3)(iv)(E), revised comment 19(e)(3)(iv)(E)-1, and new comment 19(e)(3)(iv)(E)-2.

19(e)(3)(iv)(F) Delayed Settlement Date on a Construction Loan

The Bureau proposed to amend § 1026.19(e)(3)(iv)(F) to correct a typographical error, replacing a reference to § 1026.19(f) with a reference to § 1026.19(e)(3)(iv). Section 1026.19(e)(3)(iv)(F) addresses when revised Loan Estimates can be provided for transactions involving new construction. Currently, it provides that, if the disclaimer under § 1026.19(e)(3)(iv)(F) was not provided, the creditor may not issue a revised Loan Estimate except as otherwise allowed under §1026.19(f). However, revised Loan Estimates are issued pursuant to § 1026.19(e)(3)(iv), not § 1026.19(f), and the proposed modification would have corrected this reference in § 1026.19(e)(3)(iv)(F).

In general, commenters supported the proposed revision. A compliance professional asserted that there is confusion in the industry regarding when § 1026.19(e)(3)(iv)(F) is applicable. Specifically, the commenter requested that the Bureau clarify whether § 1026.19(e)(3)(iv)(F) applies during the permanent phase or construction phase of a construction-permanent loan. The Bureau notes that § 1026.19(e)(3)(iv)(F) is applicable to any new construction transaction where the creditor reasonably expects that settlement will occur more than 60 days after the Loan Estimate is required to be provided under § 1026.19(e)(1)(iii). If a construction-permanent loan is disclosed as separate transactions and involves new construction, § 1026.19(e)(3)(iv)(F) would apply to the construction phase Loan Estimate and

permanent phase Loan Estimate if the creditor reasonably expects that settlement will occur more than 60 days after that respective Loan Estimate is required to be provided under § 1026.19(e)(1)(iii). A commenter representing a title company asked the Bureau to apply a retroactive effective date or otherwise implement technical non-substantive changes such as this one as soon as possible. See comment 1(d)(5)-2 and the Bureau's discussion regarding the effective date in part VI, below. For the reasons discussed above the Bureau is finalizing as proposed the modification to § 1026.19(e)(3)(iv)(F).

19(e)(4) Provision and Receipt of Revised Disclosures

19(e)(4)(ii) Relationship to Disclosures Required Under § 1026.19(f)

Section 1026.19(e)(3)(iv) permits creditors, in certain limited circumstances, to use revised estimates, instead of the estimate originally disclosed to the consumer, to compare to the charges actually paid by or imposed on the consumer for purposes of determining whether an estimated closing cost was disclosed in good faith (*i.e.*, whether the actual charge exceeds the allowed tolerance). This is referred to as resetting tolerances.

Section 1026.19(e)(4) contains rules for the provision and receipt of those revised estimates, including a requirement that any revised estimates used to determine good faith must be provided to the consumer within three business days of the creditor receiving information sufficient to establish that a permissible reason for revision applies. If the conditions for revising the original estimates are met, creditors generally may provide these revised estimates on revised Loan Estimates or, in certain circumstances, on Closing Disclosures. The creditor cannot provide revised estimates on a Loan Estimate on or after the date the Closing Disclosure is

provided to the consumer and the consumer must receive any revised Loan Estimate used to reset tolerances no later than four business days prior to consummation.[61] However, if there are less than four business days between the time the revised version of the disclosures is required to be provided (*i.e.*, within three business days of the time the creditor received information sufficient to establish the reason for revision) and consummation, the creditor may provide the revised estimate on a Closing Disclosure.[62] This is referred to herein as the "four-business day limit."

The Bureau's Proposal

The proposal would have added new comment 19(e)(4)(ii)-2, which provided that "[i]f there are fewer than four business days between the time the revised version of the disclosures is required to be provided under § 1026.19(e)(4)(i) and consummation or the Closing Disclosure required by § 1026.19(f)(1) has already been provided to the consumer, creditors comply with the requirements of § 1026.19(e)(4) (to provide a revised estimate under § 1026.19(e)(3)(iv) for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii)) if the revised disclosures are reflected in the corrected disclosures provided under § 1026.19(f)(2)(i) or (2)(ii), subject to the other requirements of § 1026.19(e)(4)(i)."

The proposed comment was intended to clarify that creditors may use corrected Closing Disclosures provided under § 1026.19(f)(2)(i) or (ii) (in addition to the initial Closing Disclosure) to reflect changes in costs that will be used to reset tolerances.[63] As noted above, existing comment 19(e)(4)(ii)-1 clarifies that creditors may reflect revised estimates on the Closing Disclosure to reset tolerances if there are less than four business days between the time

[61] 12 CFR § 1026.19(e)(4)(ii).
[62] *Id*. at comment 19(e)(4)(ii)-1.
[63] *See* 81 FR 54317, 54334 (Aug. 15, 2016).

the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. Although comment 19(e)(4)(ii)-1 expressly references only the Closing Disclosure required by § 1026.19(f)(1)(i), the Bureau has provided informal guidance that the provision also applies to corrected Closing Disclosures provided pursuant to § 1026.19(f)(2)(i) or (ii). The Bureau proposed comment 19(e)(4)(ii)-2 to clarify this point.

Comments Received

The Bureau received comments on this aspect of the proposal from trade associations, creditors, GSEs, mortgage software providers, secondary market purchasers, title companies, and servicers. Commenters generally supported the clarification that creditors may use corrected Closing Disclosures (in addition to initial Closing Disclosures) to reflect revised amounts and reset tolerances. However, some commenters expressed continued concern that the rule and commentary would not fully clarify ambiguities on this subject even if comment 19(e)(4)(ii)-2 were finalized as proposed. For example, one trade association commenter requested that the Bureau clarify that corrected Closing Disclosures can be provided at the closing table, and can be used to reset tolerances, if the closing occurs prior to the end of the three-business-day period after the creditor receives information sufficient to establish that a reason for revision applies.

Further, many commenters interpreted proposed comment 19(e)(4)(ii)-2 as allowing creditors to use corrected Closing Disclosures to reset tolerances regardless of when consummation is expected to occur, as long as the creditor provides the corrected Closing Disclosure within three business days of receiving information sufficient to establish a reason for revision applies pursuant to § 1029.19(e)(4)(i). Specifically, under this interpretation, creditors could provide initial Closing Disclosures to reset tolerances only if there are less than four business days between the time the revised version of the disclosures is required to be provided

pursuant to § 1026.19(e)(4)(i) and consummation. But this interpretation would remove the four-business day limit for corrected Closing Disclosures provided pursuant to § 1026.19(f)(2) and therefore allow creditors to provide corrected Closing Disclosures to reset tolerances regardless of when consummation is expected to occur. Commenters were not uniform in their interpretation of the proposal.

Commenters who interpreted the proposal as removing the four-business day limit as it applies to corrected Closing Disclosures were generally supportive, citing uncertainty about the proper interpretation of current rules and stating that current timing rules regarding resetting tolerances with a Closing Disclosure are unworkable. Some of these commenters described a situation that could occur if the creditor has already provided the Closing Disclosure and an event occurs or a consumer requests a change that causes an increase in closing costs that would be a reason for revision under § 1026.19(e)(3)(iv). In some circumstances, the creditor may be unable to provide a corrected Closing Disclosure to reset tolerances because there are four or more days between the time the revised disclosures would be required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. Commenters seemed to identify this as most likely to occur where there was also a delay in the scheduled consummation date after the initial Closing Disclosure is provided to the consumer.

The Bureau understands that this situation can occur because of the intersection of current timing rules regarding the provision of revised estimates to reset tolerances. Section 1026.19(e)(4)(ii) prohibits creditors from providing Loan Estimates on or after the date on which the creditor provides the Closing Disclosure. In many cases, this limitation would not create issues for creditors because current comment 19(e)(4)(ii)-1 explains that creditors may reflect revised estimates on a Closing Disclosure to reset tolerances if there are less than four

business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. But there is no similar provision that explicitly provides that creditors may use a Closing Disclosure to reflect the revised disclosures if there are four or more days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. Commenters stated that this can lead to circumstances where creditors are unable to provide either a revised Loan Estimate (because the Closing Disclosure has been provided) or a corrected Closing Disclosure (because there are four or more days prior to consummation) to reset tolerances. Commenters referred to this situation as a "gap" or "black hole" in the rules. Many commenters perceived proposed new comment 19(e)(4)(ii)-2 as resolving this issue because they interpreted it as allowing creditors to use corrected Closing Disclosures to reset tolerances even if there are four or more business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation.

Commenters noted various reasons for supporting such a change. Some commenters asserted that the inability to pass unforeseen cost increases directly to the affected consumers in these instances causes the cost of credit to increase for all consumers. Two trade associations representing settlement agents stated concerns about creditors requesting that settlement agents reduce their fees to absorb the cost of the unforeseen cost increases that could not be passed directly to the affected consumers. A national title insurance company commenter noted its belief that some creditors are currently rejecting applications and starting new ones when closing is delayed and costs increase, such as for additional appraisal or inspection fees or rate lock extension fees, to avoid the compliance and legal risks associated with the current rules. This commenter argued that these actions could cause further delay to closings and expense to

consumers. Other commenters similarly noted that the change could minimize closing delays and disruptions.

Some commenters who interpreted the proposal as removing the four-business day limit for corrected Closing Disclosures supported that perceived change, but also cautioned about unintended consequences. For example, some commenters stated that the proposal would remove a disincentive that currently exists under the rule from providing the initial Closing Disclosure extremely early in the mortgage origination process, which these commenters stated would not be consistent with the Bureau's intent that the Closing Disclosure be a statement of actual costs. Some commenters, including a national title insurance company, a mortgage servicer, and a mortgage software provider, requested that the Bureau provide additional guidance on the timing or circumstances under which it is appropriate to provide Closing Disclosures, generally (while one large creditor commenter cautioned against such an approach). Some commenters suggested other revisions to the rule the Bureau might consider in lieu of finalizing proposed comment 19(e)(4)(ii)-2. For example, one large national lender suggested that the Bureau eliminate the four-business day limit and instead develop a test to determine if the reason for revision is truly beyond the control of the creditor.

In addition to these comments, some commenters also requested that the Bureau amend § 1026.19(e)(4)(i) and comment 19(e)(4)(ii)-1 to specifically include interest rate dependent charges referred to in § 1026.19(e)(3)(iv)(D) as a reason for providing a revised estimate. Further, one trade association commenter stated that it is not clear that proposed comment 19(e)(4)(ii)-2 would apply to the initial Closing Disclosure, such that a lender may not be able to disclose a rate lock with an initial Closing Disclosure. This commenter stated that such an

interpretation could harm consumers that wish to lock their interest rate three business days before closing and receive an initial Closing Disclosure the same day to ensure a timely closing.

The Final Rule

As noted above and described in the proposal, proposed comment 19(e)(4)(ii)-2 was intended to clarify that the reference to Closing Disclosures required by § 1026.19(f)(1) in existing comment 19(e)(4)(ii)-1 refers to both the initial Closing Disclosure required by § 1026.19(f)(1) and to any corrected Closing Disclosures provided pursuant to § 1026.19(f)(2). Although the Bureau recognizes that the text of proposed comment 19(e)(4)(ii)-2 could plausibly be interpreted as also removing the existing four-business day limit for providing corrected Closing Disclosures to reset tolerances, the preamble to the proposal does not describe that the Bureau intended such a change.

At the same time, the Bureau has considered the concerns expressed by industry through comments about the implementation challenges caused by the current provisions regarding the use of Closing Disclosures to reset tolerances, and the potential negative effects of those provisions on consumers and creditors. In particular, the Bureau recognizes that the current rules may lead to circumstances under which creditors might be unable to provide revised estimates for purposes of resetting tolerances where the Closing Disclosure has already been provided and there are four or more days between consummation and the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i). The Bureau believes, however, that before finalizing a rule that addresses this issue it is advisable to propose more explicit language and to seek comment so that stakeholders who understood the proposal in accordance with the Bureau's intent will have the opportunity to provide their perspectives on this issue. For this reason, the Bureau is issuing a new proposal, concurrent with this final rule,

that would address this issue. Accordingly, the Bureau declines to finalize proposed comment 19(e)(4)(ii)-2.

19(f) Mortgage Loans—Final Disclosures

19(f)(1) Provision of Disclosures

19(f)(1)(i) Scope

As detailed in the section-by-section analysis of § 1026.19, the Bureau proposed and is now adopting conforming amendments to comment 19(f)(1)(i)-1 to reflect a change to the coverage of § 1026.19(f) to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit, regardless of whether a cooperative unit is treated as real property under State or other applicable law.

19(f)(2) Subsequent Changes

19(f)(2)(iii) Changes Due to Events Occurring After Consummation

The Bureau's Proposal

The Bureau proposed to add comment 19(f)(2)(iii)-2 to clarify the interaction of §§ 1026.19(f)(2)(iii) and 1026.17(c)(2)(ii), such that a creditor would not be required to provide to the consumer a corrected Closing Disclosure for any disclosure that is accurate under § 1026.17(c)(2)(ii), even if the amount actually paid by the consumer differs from the amount disclosed under § 1026.38(g)(2) and (o). Under § 1026.17(c)(2)(ii), for a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest is considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared for consummation of the transaction.

The Bureau requested comment on the benefits to consumers of receiving a post-consummation disclosure under § 1026.19(f)(2)(iii) of the changed per-diem interest amounts reflecting the actual amounts paid by the consumer. The Bureau also requested comment on whether additional clarity is needed in § 1026.17(e) or § 1026.19(e) regarding the effect of post-consummation events on the accuracy of disclosures or if additional clarity is needed on the interaction of §§ 1026.17(e) and 1026.19(e).

Comments Received

Several industry commenters supported adding proposed comment 19(f)(2)(iii)-2. One industry commenter opposed adding this proposed comment. This commenter indicated that consumers will not have accurate disclosures of the per-diem interest that is paid (and other disclosures affected by the change in per-diem interest such as the annual percentage rate, finance charge, and other material disclosures under TILA) if they do not receive a post-consummation disclosure under § 1026.19(f)(2)(iii) when the per-diem interest has changed after consummation. The commenter also indicated that, with no final document showing the actual amount of prepaid interest paid by the consumer, buyers and sellers of loans will not be able to accurately calculate the purchase amount of the loan, and servicers will not be able to accurately credit the consumer's account or accurately provide the Internal Revenue Service Form 1098.

Several industry commenters asked for additional clarifications related to per-diem interest. One industry commenter requested additional clarification on which disclosures are affected by the per-diem interest and thus would be covered by proposed comment 19(f)(2)(iii)-2. Two industry commenters indicated that § 1026.17(c)(2)(ii) should apply to all disclosures of per-diem interest and any affected disclosures that are provided under § 1026.19(e) and (f), including disclosures provided before or at consummation. One industry commenter suggested

that the Bureau modify the proposal to state that, even if a creditor is issuing a Closing Disclosure due to events occurring after consummation for reasons other than changes in the per-diem interest, the creditor must not amend the per-diem interest (and affected disclosures) on the corrected disclosure if it has changed.

Several industry commenters requested clarifications related to the requirement to provide a corrected Closing Disclosure under § 1026.19(f)(2)(iii). One industry commenter indicated that creditors in escrow states need additional guidance on the requirements for populating the post-consummation Closing Disclosure under § 1026.19(f)(2)(iii) because it is unclear what point in time the Closing Disclosure is disclosing. The commenter indicated that creditors in escrow states may "net out" cash to close to equal "$0" because these creditors understand the accuracy requirement to mean that they must reflect changes that have happened since the time of consummation. The commenter recommended that the Bureau amend § 1026.19(f)(2)(iii) to clarify that this post-consummation Closing Disclosure be revised to accurately reflect the changes to any charges that are the subject of the redisclosure, and that the cash to close amount be amended only to reflect the effect of the changed amount. Another industry commenter requested additional guidance on when disclosure is required under § 1026.19(f)(2)(iii) in non-escrow states where disbursement or recording occurs days after consummation and the actual recording fee is found to be less than disclosed on the Closing Disclosure at consummation. This commenter requested guidance on whether a corrected disclosure under § 1026.19(f)(2)(iii) is required to be provided to the consumer after the settlement agent has disbursed funds and refunded any excess funds remaining. Another industry commenter requested additional guidance on whether the delivery of a corrected disclosure under § 1026.19(f)(2)(iii) would extend the right of rescission period under § 1026.23.

The Final Rule

The Bureau is adopting proposed comment 19(f)(2)(iii)-2 with revisions. The Bureau is adopting comment 19(f)(2)(iii)-2 to provide that a creditor is not required to provide corrected disclosures under § 1026.19(f)(2)(iii) if the only changes that would be required to be disclosed in the corrected disclosure are changes to per-diem interest and any disclosures affected by the change in per-diem interest, even if the amount of per-diem interest actually paid by the consumer differs from the amount disclosed under § 1026.38(g)(2) and (o). In finalizing new comment 19(f)(2)(iii)-2, the Bureau has revised the comment to clarify that, if a creditor is providing a corrected Closing Disclosure under § 1026.19(f)(2)(iii) for reasons other than changes in per-diem interest and the per-diem interest has changed as well, the creditor must disclose in the corrected disclosures under § 1026.19(f)(2)(iii) the correct amount of the per-diem interest and provide corrected disclosures for any disclosures that are affected by the change in per-diem interest.

As discussed above, one industry commenter suggested that the Bureau should modify the proposal to state that, even if a creditor is issuing a Closing Disclosure due to events occurring after consummation for reasons other than changes in the per-diem interest, the creditor must not amend the per-diem interest (and affected disclosures) on the corrected disclosure if it has changed. The Bureau is not implementing this suggestion. The Bureau is concerned that, if creditors were not required to correct the per-diem interest (and affected disclosures) in the post-consummation corrected Closing Disclosure that is otherwise being provided to consumers under § 1026.19(f)(2)(iii), consumers would receive inaccurate information in the corrected Closing Disclosure that the creditor knows is incorrect at the time the disclosure is provided.

As discussed above, several industry commenters indicated that § 1026.17(c)(2)(ii) should apply to all disclosures of per-diem interest and any affected disclosures that are provided under § 1026.19(e) and (f), including disclosures provided before or at consummation. The Bureau is not adopting this suggestion. The Bureau notes that § 1026.17(c)(2)(ii) provides that for a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest is considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared for consummation of the transaction. Nonetheless, comment 17(c)(2)(ii)-1 provides that for purposes of transactions subject to §1026.19(e) and (f), the creditor shall disclose the actual amount of per-diem interest that will be collected at consummation, subject only to the disclosure rules in those sections. The Bureau notes that for disclosure of per-diem interest in the Loan Estimate, § 1026.19(e)(3)(iii) provides that the prepaid interest disclosure must be consistent with the best information reasonably available to the creditor at the time it is disclosed. For disclosures of per-diem interest in the Closing Disclosure provided on or before consummation, comment 19(f)(1)(i)-2 provides that creditors may estimate disclosures provided under § 1026.19(f)(1)(ii)(A) and (f)(2)(ii) using the best information reasonably available when the actual term is unknown to the creditor at the time disclosures are made, consistent with § 1026.17(c)(2)(i). As discussed above, new comment 19(f)(2)(iii)-2 sets forth the circumstances in which changes in per-diem interest must be disclosed in post-consummation disclosures under § 1026.19(f)(2)(iii).

As discussed above, one industry commenter requested additional guidance on when disclosure is required under § 1026.19(f)(2)(iii) in non-escrow states where disbursement or recording occurs days after consummation and the actual recording fee is found to be less than

disclosed on the Closing Disclosure at consummation. The Bureau is not adopting additional clarification in the final rule because this situation is already addressed in the example in current comment 19(f)(2)(iii)-1.i.

Also, with respect to the comment requesting clarification as to how the delivery of a corrected disclosure under § 1026.19(f)(2)(iii) relates to the right of rescission period under § 1026.23, the Bureau notes that guidance for rescission rights related to closed-end credit can be found in current § 1026.23 and its associated commentary. In addition, one industry commenter recommended that the Bureau amend § 1026.19(f)(2)(iii) to clarify that the post-consummation Closing Disclosure be revised to accurately reflect the changes to any charges that are the subject of the redisclosure, and that the cash to close amount be amended only to reflect the effect of the changed amount. The Bureau is not addressing this issue as part of the final rule. The Bureau did not propose changes in the proposal to address this issue and has not collected sufficient information to address this issue as part of the final rule.

19(f)(2)(v) Refunds Related to the Good Faith Analysis

Comment 19(f)(2)(v)-1 explains that under § 1026.19(f)(2)(v), if amounts paid at consummation exceed the amounts specified under § 1026.19(e)(3)(i) or (ii), the creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers or places in the mail disclosures corrected to reflect the refund of such excess no later than 60 days after consummation. Comment 19(f)(2)(v)-1 refers to comment 38(h)(3)-2 for additional guidance on disclosing refunds. The Bureau proposed to revise comment 19(f)(2)(v)-1 to add a cross-reference to proposed comment 38-4. The Bureau also proposed to revise the dollar amounts in the example in comment 19(f)(2)(v)-1 for greater clarity.

A financial holding company asserted that the Bureau's preamble states that the Bureau proposed to amend comment 38(h)(3)-2, but the Bureau failed to provide amended commentary. The commenter requested that the Bureau provide the text of the amended commentary. A mortgage company requested that the Bureau increase the timing requirements for refunds related to the good faith analysis in § 1026.19(f)(2)(v) from 60 days after consummation to the timing under § 1026.43(e)(3)(iii)(B) for a creditor to cure a violation of the qualified mortgage limit on points and fees.

The Bureau is adopting as proposed the revisions to comment 19(f)(2)(v)-1. The Bureau believes the cross-reference to final comment 38-4 is helpful for compliance purposes and the revised example is clearer. Comment 19(f)(2)(v)-1 currently cross-references comment 38(h)(3)-2, and although the Bureau did propose to amend comment 19(f)(2)(v)-1, the Bureau did not propose to amend the cross-reference to comment 38(h)(3)-2 or to amend comment 38(h)(3)-2 itself. Therefore, the Bureau is not amending comment 38(h)(3)-2 in this final rule. The Bureau also is not altering the timing requirements under § 1026.19(f)(2)(v) in this final rule as requested by a commenter. The Bureau believes that the current 60-day period after consummation will give creditors sufficient time to cure tolerance violations. Further, the Bureau believes that extending the cure period further than 60 days after consummation would undermine the incentive for creditors to conduct quality control reviews as soon as reasonably practicable after consummation.

19(f)(3) Charges Disclosed

19(f)(3)(ii) Average Charge

As detailed in the section-by-section analysis of § 1026.19, the Bureau proposed and is now adopting conforming amendments to comment 19(f)(3)(ii)-3 to reflect a change to the

coverage of § 1026.19(f) to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit, regardless of whether a cooperative unit is treated as real property under State or other applicable law.

19(f)(4) Transactions Involving a Seller

19(f)(4)(i) Provision to Seller

Comment 19(f)(4)(i)-1 explains that the settlement agent complies with § 1026.19(f)(4)(i) either by providing to the seller a copy of the Closing Disclosure provided to the consumer, if it also contains the information under § 1026.38 relating to the seller's transaction, or by providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable. Section 1026.38(t)(5)(v) permits the creditor or settlement agent preparing the form to use form H-25 of appendix H for the disclosure provided to both the consumer and the seller, with certain modifications to separate the information of the consumer and seller, as necessary. Section 1026.38(t)(5)(vi) permits certain information to be deleted from the form provided to the seller or a third-party. The Bureau proposed to streamline § 1026.19(f)(4)(i) by replacing unnecessary text with a cross-reference to § 1026.19(e)(1)(i), to streamline comment 19(f)(4)(i)-1, and to add comment 19(f)(4)(i)-2 to clarify that in purchase transactions with simultaneous subordinate financing the settlement agent complies with § 1026.19(f)(4)(i) by providing the seller with only the Closing Disclosure for the first-lien transaction if that Closing Disclosure records the entirety of the seller's transaction.

A trade association commenter supported the clarifying language in the proposed revisions to § 1026.19(f)(4)(i) and its commentary. Other commenters specifically supported the Bureau's proposal in comment 19(f)(4)(i)-2 to clarify that, in a purchase transaction with simultaneous subordinate financing, the settlement agent complies with § 1026.19(f)(4)(i) by

providing the seller with only the Closing Disclosure for the first-lien transaction if that Closing Disclosure records the entirety of the seller's transaction.

For the reasons discussed below, the Bureau is adopting the proposed amendments to § 1026.19(f)(4)(i) and comment 19(f)(4)(i)-1 as final, and is revising new comment 19(f)(4)(i)-2 for better alignment with comment 19(f)(4)(i)-1. The Bureau believes streamlining § 1026.19(f)(4)(i) and comment 19(f)(4)(i)-1 will aid in industry compliance. Although not raised as a concern by commenters, the Bureau recognizes that as proposed, new comment 19(f)(4)(i)-2 could have appeared to impose additional disclosure requirements for simultaneous subordinate financing. Therefore, the Bureau is revising comment 19(f)(4)(i)-2 to more closely mirror the language of comment 19(f)(4)(i)-1. Final comment 19(f)(4)(i)-2 provides that in a purchase transaction with simultaneous subordinate financing, the settlement agent complies with § 1026.19(f)(4)(i) by providing the seller with only the first-lien transaction disclosures required under § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction in accordance with comment 19(f)(4)(i)-1 if the first-lien Closing Disclosure records the entirety of the seller's transaction. If the first-lien Closing Disclosure does not record the entirety of the seller's transaction, comment 19(f)(4)(i)-2 provides that the settlement agent complies with § 1026.19(f)(4)(i) by providing the seller with both the first-lien and simultaneous subordinate financing transaction disclosures required under § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction in accordance with comment 19(f)(4)(i)-1. The Bureau concludes that in a purchase transaction with simultaneous subordinate financing, if the Closing Disclosure for the first-lien transaction records the entirety of the seller's transaction, the seller receives no additional benefit from receiving a copy of the § 1026.38 disclosures for the simultaneous subordinate financing.

19(g) Special Information Booklet at Time of Application

19(g)(1) Creditor to Provide Special Information Booklet

As detailed in the section-by-section analysis of § 1026.19, the Bureau is adopting amendments to § 1026.19(g)(1) substantially as proposed. Specifically, § 1026.19(g)(1), as finalized, covers consumer credit transactions secured by real property or a cooperative unit, regardless of whether they are open-end or closed-end transactions (and except as provided in § 1026.19(g)(1)(ii) and (iii)). As finalized, § 1026.19(g)'s coverage continues not to be limited to closed-end transactions (except as provided in § 1026.19(g)(1)(ii) and (iii)).

Section 1026.23 Right of Rescission

23(g) Tolerances for Accuracy

The Bureau's Proposal

TILA section 125 sets forth a consumer's right to rescind certain transactions.[64] For purposes of a consumer's right of rescission, TILA section 106(f)(2)[65] sets forth the applicable tolerances for accuracy of the finance charge[66] and other disclosures affected by any finance charge, which has been understood to include the total of payments.[67] Section 1026.23(g) implements this statutory provision.

As explained more fully in the section-by-section analysis of § 1026.38(o)(1), the finance charge tolerance historically applied to the total of payments because that calculation was

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[64] 15 U.S.C. 1635.
[65] 15 U.S.C. 1605(f)(2).
[66] Finance charge is defined in TILA section 106(a) (15 U.S.C. 1605(a)). Section 1026.4 implements this definition, provides examples, and excludes certain charges from the finance charge.
[67] *See Carmichael v. The Payment Ctr., Inc.*, 336 F.3d 636, 639 (7th Cir. 2003) (interpreting the total of payments as a disclosure affected by the finance charge and therefore subject to the finance charge tolerances as long as a misdisclosure of the total of payments resulted from a misdisclosure of the finance charge).

affected by the finance charge. However, in the TILA-RESPA Final Rule, the Bureau modified the requirement under TILA section 128(a)(5) to disclose the total of payments as the sum of the amount financed and the finance charge by requiring instead that a creditor disclose the total of payments on the Closing Disclosure as the sum of principal, interest, mortgage insurance, and loan costs. The Bureau believed that modifying the calculation of the total of payments would improve consumer understanding.[68] As explained in the proposal, the Bureau believed it would be appropriate to continue to apply the tolerances for the finance charge and disclosures affected by the finance charge to the modified total of payments calculation. Accordingly, the Bureau proposed to revise § 1026.23(g) to apply the same tolerances for accuracy to the total of payments for purposes of the Closing Disclosure that already apply to the finance charge and other disclosures affected by the finance charge. The Bureau sought comment on these proposed revisions to § 1026.23(g).

Comments Received

Comments received on the proposed tolerances for the total of payments apply generally to both §§ 1026.23(g) and 1026.38(o)(1). See the discussion below in the section-by-section analysis of § 1026.38(o)(1) for a summary of and responses to those comments.

The Final Rule

For the reasons discussed below in the section-by-section analysis of § 1026.38(o)(1), the Bureau adopts the revisions to § 1026.23(g) as proposed. Specifically, the Bureau redesignates current § 1026.23(g)(1) and (2) as § 1026.23(g)(1)(i) and (2)(i) and amends § 1026.23(g)(1)(ii) to provide that, in general, the total of payments for each transaction subject to § 1026.19(e) and

[68] 78 FR 79730, 80038 (Dec. 31, 2013).

(f) shall be considered accurate for purposes of § 1026.23 if the disclosed total of payments: (A) is understated by no more than ½ of 1 percent of the face amount of the note or $100, whichever is greater; or (B) is greater than the amount required to be disclosed. The Bureau further amends § 1026.23(g)(2)(ii) to provide that, in a refinancing of a residential mortgage transaction with a new creditor (other than a transaction covered by § 1026.32), if there is no new advance and no consolidation of existing loans, the total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of § 1026.23 if the disclosed total of payments (A) is understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or (B) is greater than the amount required to be disclosed. The Bureau also adopts new comment 23(g)-1 as proposed, which references the examples set forth in new comment 38(o)-1 that illustrate the interaction of the finance charge and total of payments accuracy requirements for each transaction subject to § 1026.19(e) and (f).

Legal Authority

The Bureau revises § 1026.23(g) to apply the same tolerances for accuracy of the finance charge and other disclosures affected by the finance charge to the total of payments for each transaction subject to § 1026.19(e) and (f) pursuant to its authority to set tolerances for numerical disclosures under TILA section 121(d).[69] Section 121(d) of TILA generally authorizes the Bureau to adopt tolerances necessary to facilitate compliance with the statute, provided such tolerances are narrow enough to prevent misleading disclosures or disclosures that circumvent the purposes of the statute.

[69] 15 U.S.C. 1631(d).

The Bureau has considered the purposes for which it may exercise its authority under TILA section 121(d). As noted below in the section-by-section analysis of § 1026.38(o)(1), the Bureau has concluded that the tolerances for the total of payments promote consistency with the tolerances in effect before the TILA-RESPA Final Rule. The Bureau therefore believes that the tolerances facilitate compliance with the statute. Additionally, the Bureau believes that the tolerances in revised § 1026.23(g)(1)(ii) and (2)(ii), which are identical to the finance charge tolerances provided by Congress in TILA section 106(f), are sufficiently narrow to prevent these tolerances from resulting in misleading disclosures or disclosures that circumvent the purposes of TILA.

23(h) Special Rules for Foreclosures

23(h)(2) Tolerance for Disclosures

The Bureau's Proposal

For purposes of exercising rescission rights after the initiation of foreclosure, TILA section 125(i)(2) explains that the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate if the amount disclosed as the finance charge does not vary from the actual finance charge by more than $35 or is greater than the amount required to be disclosed.[70] Section 1026.23(h)(2) implements this statutory provision.

As explained more fully above in the section-by-section analysis of § 1026.23(g) and below in the section-by-section analysis of § 1026.38(o)(1), the finance charge tolerance historically applied to the total of payments because that calculation was affected by the finance charge. For the reasons discussed in the section-by-section analyses of §§ 1026.23(g) and

[70] 15 U.S.C. 1635(i)(2).

1026.38(o)(1), the Bureau proposed to revise § 1026.23(h)(2) to apply the same tolerances for accuracy to the total of payments for purposes of the Closing Disclosure that already apply to the finance charge and other disclosures affected by the finance charge. The Bureau sought comment on the proposed amendment to § 1026.23(h)(2) and its commentary.

Comments Received

Comments received on the proposed tolerances for the total of payments generally apply to both §§ 1026.23(h)(2) and 1026.38(o)(1). See the discussion below in the section-by-section analysis of § 1026.38(o)(1) for a summary of and responses to those comments.

The Final Rule

For the reasons discussed below in the section-by-section analysis of § 1026.38(o)(1), the Bureau adopts the revisions to § 1026.23(h)(2) as proposed. Specifically, the Bureau redesignates current § 1026.23(h)(2) as § 1026.23(h)(2)(i) and amends § 1026.23(h)(2)(ii) to provide that, after the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of § 1026.23 if the disclosed total of payments: (A) is understated by no more than $35; or (B) is greater than the amount required to be disclosed.

The Bureau revises comment 23(h)(2)-1 to also explain that, for each transaction subject to § 1026.19(e) and (f), § 1026.23(h)(2) is based on the accuracy of the total of payments, taken as a whole, rather than its component charges. The Bureau also adopts new comment 23(h)(2)-2 as proposed, which references the examples set forth in new comment 38(o)-1 that illustrate the interaction of the finance charge and total of payments accuracy requirements for each transaction subject to § 1026.19(e) and (f).

Legal Authority

The Bureau revises § 1026.23(h)(2) to apply the same tolerances for accuracy of the finance charge and other disclosures affected by the finance charge to the total of payments for each transaction subject to § 1026.19(e) and (f) pursuant to its authority to set tolerances for numerical disclosures under TILA section 121(d).[71] Section 121(d) of TILA generally authorizes the Bureau to adopt tolerances necessary to facilitate compliance with the statute, provided such tolerances are narrow enough to prevent misleading disclosures or disclosures that circumvent the purposes of the statute. The Bureau has considered the purposes for which it may exercise its authority under TILA section 121(d). As noted below in the section-by-section analysis of § 1026.38(o)(1), the Bureau has concluded that the tolerances for the total of payments promote consistency with the tolerances in effect before the TILA-RESPA Final Rule. The Bureau therefore believes that the tolerances facilitate compliance with the statute. Additionally, the Bureau believes that the tolerances in revised § 1026.23(h)(2)(ii), which are identical to the finance charge tolerances provided by Congress in TILA section 125(i)(2), are sufficiently narrow to prevent these tolerances from resulting in misleading disclosures or disclosures that circumvent the purposes of TILA.

Section 1026.25 Record Retention

25(c) Records Related to Certain Requirements for Mortgage Loans

25(c)(1) Records Related to Requirements for Loans Secured by Real Property

As detailed in the section-by-section analysis of § 1026.19, the Bureau proposed and is now adopting conforming amendments to the paragraph title for § 1026.25(c)(1), and a

[71] 15 U.S.C. 1631(d).

subheading for the commentary to § 1026.25(c)(1), to reflect a change to the coverage of § 1026.19(e) and (f) to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit, regardless of whether a cooperative unit is treated as real property under State or other applicable law.

Section 1026.37 Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)

37(a) General Information

37(a)(7) Sale Price

Comment 37(a)(7)-1 explains the requirement in § 1026.37(a)(7)(ii) to provide the estimated value of the property in transactions where there is no seller. The comment explains that, where there is no seller, the creditor may use the estimate provided by the consumer at application, or if it has performed its own estimate of the property value by the time the disclosure is provided to the consumer, use that estimate. The Bureau proposed to revise comment 37(a)(7)-1 to clarify that, if a creditor has performed its own estimate of the property value by the time the disclosure is provided to the consumer, the creditor must disclose its own estimate under § 1026.37(a)(7)(ii).

One industry commenter requested that, with respect to a transaction involving construction where there is no seller, the Bureau clarify that the creditor must disclose under § 1026.37(a)(7)(ii) the value of the underlying lot at the time of issuing the Loan Estimate, irrespective of what the projected value of the property may be after construction is finished because the value of the land would be the value of the property at the time the Loan Estimate is given. This commenter also asked the Bureau to clarify the disclosure requirement on the Closing Disclosure under § 1026.38(a)(3)(vii) for the appraised value for a transaction involving construction where there is no seller. The commenter asked for clarification on whether the

creditor must disclose only the value of the underlying lot, or instead must disclose the projected value of the completed project after construction is finished that was used to determine approval of the credit transaction.

The Bureau is adopting the proposed modifications to comment 37(a)(7)-1, with revisions. As discussed in more detail below, the Bureau is adopting the proposed change to final comment 37(a)(7)-1. Also, in response to the comment discussed above, the Bureau is revising comment 37(a)(7)-1 to provide additional guidance on how creditors may make the disclosures under § 1026.37(a)(7)(ii) with respect to transactions involving construction where there is no seller.

Current comment 37(a)(7)-1, in part, provides that in transactions where there is no seller, such as in a refinancing, § 1026.37(a)(7)(ii) requires the creditor to disclose the estimated value of the property identified in § 1026.37(a)(6) at the time the disclosure is issued to the consumer. The commenter appears to read the language "at the time the disclosure is issued to the consumer" to mean that for transactions involving construction where there is no seller, the creditor must disclose the value of the land under § 1026.37(a)(7)(ii), irrespective of what the projected value of the property may be after construction is finished, because the value of the land would be the value of the property at the time the Loan Estimate is given. At the time the Loan Estimate is given, the improvements to be made to the land have not been completed. Nonetheless, the Bureau notes that the language "at the time of the disclosure" instead is intended to indicate that the disclosure of the estimated value of the property must be based on the best information reasonably available to the creditor at the time the disclosure is provided, consistent with the general standard set forth for accuracy of the Loan Estimate disclosures in comment 19(e)(1)(i)-1. To make this clearer, the Bureau is revising comment 37(a)(7)-1 to

indicate that where there is no seller, § 1026.37(a)(7)(ii) requires the creditor to disclose the estimated value of the property identified in § 1026.37(a)(6) based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer. To facilitate compliance, the Bureau also is revising comment 37(a)(7)-1 to clarify that for transactions involving construction where there is no seller, the estimated value of the property may include, at the creditor's option, the estimated value of the improvements to be made on the property. Alternatively, the creditor in transactions involving construction where there is no seller may disclose under § 1026.37(a)(7)(ii) the estimated value of the property that does not include the estimated value of the improvements to be made on the property.

The Bureau believes that this flexibility will give a creditor the option of maintaining consistency between the disclosure of the estimated value of the property in the Loan Estimate under § 1026.37(a)(7) and the disclosure of the value of the property in the Closing Disclosure under § 1026.38(a)(3)(vii) in transactions involving construction where there is no seller. As discussed in the section-by-section analysis of § 1026.38(a)(3)(vii), current comment 38(a)(3)(vii)-1 provides that, for transactions without a seller, the creditor must disclose on the Closing Disclosure under § 1026.38(a)(3)(vii) the value of the property that is used to determine the approval of the credit transaction. The Bureau is revising comment 38(a)(3)(vii)-1 to make clear that, for transactions involving construction where there is no seller, the creditor must disclose the value of the property that is used to determine the approval of the credit transaction, including improvements to be made on the property if those improvements are used in determining the approval of the credit transaction. Thus, if a creditor includes improvements to be made on a property in determining the approval of a credit transaction involving construction where there is no seller, the creditor must include the improvements in the disclosure of the value

of the property on the Closing Disclosure under § 1026.38(a)(3)(vii). Final comment 37(a)(7)-1 allows a creditor the flexibility to include the improvements into the estimated value of the property disclosed on the Loan Estimate under § 1026.37(a)(7), which gives the creditor the option of maintaining consistency between the disclosure that is given on the Loan Estimate under § 1026.37(a)(7) and the disclosure that will be given on the Closing Disclosure under § 1026.38(a)(3)(vii) by including improvements to be made in both disclosures. On the other hand, if a creditor does not include improvements to be made on the property in determining the approval of a credit transaction involving construction where there is no seller, the creditor must not include the improvements in the disclosure of the value of the property on the Closing Disclosure under § 1026.38(a)(3)(vii). Final comment 37(a)(7)-1 allows a creditor the flexibility not to include the improvements into the estimated value of the property disclosed under § 1026.37(a)(7), which gives the creditor the option of maintaining consistency between the disclosure that is given on the Loan Estimate under § 1026.37(a)(7) and the disclosure that will be given on the Closing Disclosure under § 1026.38(a)(3)(vii) by not including improvements to be made in both disclosures.

Current comment 37(a)(7)-1 also provides, in part, that the creditor may use the estimate provided by the consumer at application, or if it has performed its own estimate of the property value by the time the disclosure is provided to the consumer, use that estimate. If the creditor has obtained any appraisals or valuations of the property for the application at the time the disclosure is issued to the consumer, the value determined by the appraisal or valuation to be used during underwriting for the application is disclosed as the estimated property value. If the creditor has obtained multiple appraisals or valuations and has not yet determined which one will be used during underwriting, it may disclose the value from any appraisal or valuation it

reasonably believes it may use in underwriting the transaction. Consistent with the proposal, the Bureau is revising comment 37(a)(7)-1 to clarify that, if a creditor has performed its own estimate of the property value by the time the disclosure is provided to the consumer, the creditor must disclose its own estimate rather than disclose an estimate provided by the consumer at application.

Cooperatives

As detailed in the section-by-section analysis of § 1026.19, the Bureau proposed and is now adopting conforming amendments to comment 37(a)(7)-2 to reflect a change to the coverage of § 1026.19(e) and (f) to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit, regardless of whether a cooperative unit is treated as real property under State or other applicable law.

37(a)(8) Loan Term

Section 1026.37(a)(8) requires disclosure of the term to maturity of the credit transaction. The Bureau proposed to add comment 37(a)(8)-3 to provide a cross-reference to proposed new comment app. D-7.i, which explains the disclosure of the loan term for a construction-permanent loan, taking into account the unique features of such a transaction.

Commenters generally appreciated the additional clarification provided by comment 37(a)(8)-3 and comment app. D-7.i. However, two commenters indicated the cross-references to comment 37(a)(8)-3 in proposed comment app. D-7.i were not clear. Although both comments app. D-7.i.A and B referred to comment 37(a)(8)-3 as providing relevant explanations, comment 37(a)(8)-3, as proposed, provided a cross-reference but did not include any explanations. Two commenters also requested the Bureau clarify that the loan term for construction loans is

determined using the approach applicable to non-construction loans in addition to the construction-specific clarifications provided in comment 37(a)(8)-3 and comment app. D-7.i.

For the reasons explained in the discussion of comment app. D-7.i, below, the Bureau is finalizing comment 37(a)(8)-3 as proposed. The Bureau is not including more than a cross-reference to comment app. D-7.i in comment 37(a)(8)-3. As explained in the section-by-section analysis of comment app. D-7.i, sections, such as § 1026.17(c)(3) and (c)(4), are applicable in determining the impact of minor variations in the number of days counted for the loan term, as well as other disclosures, as applicable. In order to avoid creating an impression that only § 1026.17(c)(3) applies for purposes of construction and construction-permanent disclosures to the exclusion of other potentially applicable sections, the Bureau declines to add further clarification in comment 37(a)(8)-3 about the applicability of other sections to determining the loan term for loans.

37(a)(9) Purpose

Section 1026.37(a)(9) requires a creditor to disclose on the Loan Estimate the consumer's intended use for the credit, labeled "Purpose." Comment 37(a)(9)-1.i explains that the creditor must disclose the loan purpose as "Purchase" when the consumer intends to use the proceeds from the transaction to purchase the property that will secure the extension of credit. Because the proceeds from simultaneous subordinate financing in a purchase transaction are used to purchase the property that will secure the extension of credit, the Bureau proposed to amend comment 37(a)(9)-1.i to clarify that simultaneous subordinate financing used to purchase the property is disclosed with the purpose "Purchase" under § 1026.37(a)(9). The Bureau also proposed to make a minor technical revision to comment 37(a)(9)-1.iii to change the phrase

“construction-to-permanent” to “construction-permanent” for consistency with terminology used elsewhere in the proposed rule.

The Bureau received one comment responsive to the proposals to amend comments 37(a)(9)-1.i and 37(a)(9)-1.iii. A title insurance company stated that the Bureau should provide a corresponding amendment that pertains to the Closing Disclosure.

For the reasons discussed below, the Bureau is adopting the amendment to comment 37(a)(9)-1.i as proposed with a technical revision and the technical revision to comment 37(a)(9)-1.iii as proposed with an additional revision. As discussed above, a commenter requested that the Bureau provide an amendment for the Closing Disclosure comparable to that in comment 37(a)(9)-1.i. The Bureau concludes that a corresponding amendment for the Closing Disclosure is not necessary because the Closing Disclosure’s requirement to disclose the loan purpose, in § 1026.38(a)(5)(ii), specifically cross-references the disclosure required by § 1026.37(a)(9), which also includes the commentary to § 1026.37(a)(9). An additional conforming amendment is being made to comment 37(a)(9)-1.iii to include a cross-reference to comment 17(c)(6)-5, which is being amended as discussed above in the section-by-section analysis of § 1026.17(c)(6) and provides additional guidance on disclosing construction-permanent loans.

37(a)(10) Product

Section 1026.37(a)(10) requires a description of the loan product to be disclosed, including the features that may change the periodic payment. Comment 37(a)(10)-2.ii explains disclosure of the interest-only feature. The Bureau proposed to add a cross-reference in comment 37(a)(10)-2.ii to proposed comment app. D-7.ii, which explained the disclosure of the time period of the interest-only feature for a construction loan or a construction-permanent loan.

The Bureau did not receive comments on adding a cross-reference to comment app. D-7.ii into comment 37(a)(10)-2.ii. The Bureau is adopting as proposed the revision to comment 37(a)(10)-2.ii.

37(a)(13) Rate Lock

The Bureau's Proposal

Section 1026.37(a)(13) requires creditors to disclose the date and time at which estimated closing costs expire. Section 1026.19(e)(3)(iv)(E) provides that, for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), a creditor may use a revised estimate of a charge instead of the estimate of the charge originally disclosed on the Loan Estimate (*i.e.*, the creditor may reset the applicable tolerance) if the consumer indicates an intent to proceed with the transaction more than 10 business days after the Loan Estimate is provided under § 1026.19(e)(1)(iii). The Bureau proposed to amend comment 37(a)(13)-2 to clarify the relationship between the expiration date disclosure under § 1026.37(a)(13)(ii) and the ability to reset tolerances under § 1026.19(e)(3)(iv)(E). The Bureau also proposed to amend comment 37(a)(13)-2 by adding a cross-reference to new proposed comment 19(e)(3)(iv)(E)-2, which would clarify when the creditor may use a revised estimate of a charge for the purposes of determining good faith under § 1026.19(e)(3)(i) and (ii) in circumstances where the creditor voluntarily extends the period for which it will honor the estimated charges disclosed on the Loan Estimate for a period beyond 10 business days. The Bureau further proposed to add new comment 37(a)(13)-4,[72] to clarify that, once the consumer has indicated an intent to proceed with

[72] Although the proposed amendatory instructions in the proposal correctly labeled this new comment as 37(a)(13)-4, the accompanying section-by-section analysis of § 1026.37(a)(13) inadvertently described the proposed comment

the transaction, the date and time at which estimated closing costs expire would be left blank on revised Loan Estimates, if any.

Comments Received

Some industry commenters supported the revisions to comment 37(a)(13)-2 and proposed new comment 37(a)(13)-4. A vendor and two State trade association commenters stated that the last sentence of the § 1026.37(a)(13) disclosure on form H-24 of appendix H, which begins with the phrase "All other estimated closing costs expire on" and includes the date and time when the charges unrelated to the interest rate expire, should be either deleted on revised Loan Estimates after the consumer has expressed an intention to proceed or completed with the term "N/A." One industry commenter stated a concern about the applicability of an extended expiration period to loans that would be in process when revised comment 37(a)(13)-2 and new comment 37(a)(13)-4 are effective, and indicated that changing the expiration period for loans in process could be difficult for creditors. One vendor and an industry commenter stated that there should be no change to the expiration dates because no consumer testing was conducted on the change, and that the change could prompt consumer confusion and mistrust of creditors. A vendor group stated that the proposed revisions could be read to require the disclosure of a 10-day expiration date, with any potential extension documented outside the disclosures.

The Final Rule

For the reasons discussed below, the Bureau is adopting revised comment 37(a)(13)-2 as proposed and new comment 37(a)(13)-4 as proposed. In response to commenters' suggestions to

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as "new comment 37(a)(13)-3." There is an existing comment 37(a)(13)-3 concerning time zones in the Official Interpretations of Regulation Z, and no modification of existing comment 37(a)(13)-3 was proposed.

require the deletion of the sentence, "All other estimated closing costs expire on," on the first page of the Loan Estimate or to complete the sentence with the term "N/A," the Bureau notes that new comment 37(a)(13)-4 was intended to provide guidance with respect to expiration-date disclosures on any revised Loan Estimates provided once a consumer has indicated an intent to proceed. However, the Bureau did not propose modifications to the Loan Estimate form itself.[73] In addition, the terms "N/A" or "not applicable" are not permitted to be used on the Loan Estimate.[74] Regarding commenters' concerns relating to the effect of the proposed revised comment 37(a)(13)-2 and proposed new comment 37(a)(13)-4 on loans that are already in process when the provisions are effective, the date disclosed on the initial Loan Estimate provided by the creditor controls the length of the expiration period. For loans where the initial Loan Estimate discloses a 10-day expiration date, nothing in current Regulation Z requires a creditor to subsequently permit a longer time period. Once the consumer has expressed an intention to proceed, the expiration date is moot for the purposes of the Loan Estimate, as the amounts disclosed provide the applicable baseline for the good faith tolerance requirements under § 1026.19(e)(3). Accordingly, the disclosure of the expiration date on revised Loan Estimates provided after the consumer indicates an intention to proceed does not change the validity of the charges disclosed on the Loan Estimate. Regarding suggestions that consumer testing is necessary for various permutations of the disclosure on revised Loan Estimates provided after the consumer indicates an intention to proceed, the Bureau does not consider additional consumer testing to be necessary in this instance. The general rule of leaving

[73] 81 FR 54317, 54320 (Aug. 15, 2016).
[74] *See* comment 37-1.

inapplicable disclosures blank on the Loan Estimate furthers the goals of reducing information overload.[75] As to the commenter that stated that the proposed revisions could be read to require the disclosure of a 10-day expiration date, the Bureau believes that revised comment 37(a)(13)-2 is clear that the creditor may choose a longer expiration period, and that the cross-reference to comment 19(e)(3)(iv)(E)-2, which also explicitly references the permission of the creditor to set a longer time period under § 1026.19(e)(3)(iv)(E), provides sufficient clarity to creditors. Accordingly, the Bureau is adopting revised comment 37(a)(13)-2 as proposed and new comment 37(a)(13)-4 as proposed.

37(b) Loan Terms

37(b)(1) Loan Amount

Section 1026.37(b)(1) currently requires the disclosure on the Loan Estimate of the amount of credit to be extended under the terms of the legal obligation, labeled "Loan Amount." To reduce inconsistent language in Regulation Z and facilitate compliance, the Bureau proposed to revise § 1026.37(b)(1) to indicate that the loan amount disclosed on the Loan Estimate (and, accordingly, on the Closing Disclosure) would be the total amount the consumer will borrow, as reflected by the face amount of the note. This language parallels that of § 1026.32(c)(5), which requires the disclosure of the total amount the consumer will borrow, as reflected by the face amount of the note for loans subject to the Home Ownership and Equity Protection Act (HOEPA). Commenters stated that they agreed that the proposed revision would clarify the amount to be disclosed and supported the proposed revision. Accordingly, the Bureau is adopting the proposed revision to § 1026.37(b)(1).

[75] 78 FR 79730, 79742 (Dec. 31, 2013).

37(b)(2) Interest Rate

Section 1026.37(b)(2) requires disclosure of the interest rate that will be applicable to the transaction at consummation. The Bureau proposed to add a cross-reference in comment 37(b)(2)-1 to proposed comment app. D-7.iii, which, as discussed further below, explained the disclosure of the permanent financing interest rate for a construction-permanent loan.

The Bureau did not receive comments on the addition of the cross-reference in comment 37(b)(2)-1 to proposed comment app. D-7.iii. The Bureau is adopting as proposed the revision to comment 37(b)(2)-1.

37(b)(3) Principal and Interest Payment

Section 1026.37(b)(3) requires disclosure of the initial periodic payment amount. The Bureau proposed to add a cross-reference in comment 37(b)(3)-2 to proposed comment app. D-7.iv, which explained the disclosure of an initial periodic payment for a construction or construction-permanent loan.

The Bureau did not receive comments on the addition of the cross-reference in comment 37(b)(3)-2 to proposed comment app. D-7.iv. However, because, as discussed below, the Bureau is not adopting proposed comment app. D-7.iv, the Bureau is not adopting the proposed revision to comment 37(b)(3)-2.

37(b)(6) Adjustments After Consummation

37(b)(6)(iii) Increase in Periodic Payment

Section 1026.37(b)(6)(iii) requires disclosures of increases in the periodic payment if the periodic payment may increase after consummation. The Bureau proposed to add a cross-reference in comment 37(b)(6)(iii)-1 to proposed comment app. D-7.v, which, as discussed

further below, explained the disclosure of an increase in the periodic payment for a construction or construction-permanent loan.

The Bureau did not receive comments on the addition of the cross-reference in comment 37(b)(6)(iii)-1 to proposed comment app. D-7.v. The Bureau is adopting as proposed the revision to comment 37(b)(6)(iii)-1, but, because proposed comment app. D-7.iv is not being adopted, the reference to comment app. D-7.v is renumbered as comment app. D-7.iv.

37(c) Projected Payments

Section 1026.37(c) requires itemization of each separate periodic payment or range of payments. As described below, the Bureau proposed to amend the commentary accompanying § 1026.37(c), (c)(1)(iii)(B), and (c)(4)(iv). The Bureau proposed to add new comment 37(c)-2 to provide a cross-reference to comment app. D-7.vi, which explains the projected payments disclosure for a construction or construction-permanent loan.

The Bureau did not receive comments on the addition of the cross-reference in comment 37(c)-2 to proposed comment app. D-7.vi. The Bureau is adopting as proposed the revision to comment 37(c)-2, but, because proposed comment app. D-7.iv is not being adopted, the reference to comment app. D-7.vi is renumbered as comment app. D-7.v.

37(c)(1) Periodic Payment or Range of Payments

37(c)(1)(iii)

37(c)(1)(iii)(B)

The Bureau's Proposal

Section 1026.37(c) requires creditors to disclose an itemization of the periodic payments. Under certain circumstances, described in § 1026.37(c)(1)(iii), creditors must disclose the minimum and maximum periodic payment amounts (the range). Section 1026.37(c)(1)(iii)(B)

requires disclosing the range when the periodic principal and interest payment may change more than once during a single year. Section 1026.37(c)(1)(iii)(B) also requires disclosing the range when the periodic principal and interest payment may change during the same year as the initial periodic payment. Generally, pursuant to § 1026.37(c)(3)(ii), periodic payments or ranges of payments must be disclosed under a subheading that states the years of the loan during which the payment or range of payments will apply.

Comment 37(c)(1)(iii)(B)-1 illustrates the disclosure of ranges of payments when multiple changes to periodic principal and interest payments occur during a single year. One of the examples in that comment involves a loan payment that adjusts upward at three months and at six months, adjusts once more at 18 months, and becomes fixed thereafter. The Bureau identified inconsistencies between that commentary example and the requirements of § 1026.37(c)(1). Specifically, that commentary example calls for disclosing as a single range in year two: the payment that would apply on the first anniversary of the due date of the initial periodic payment; and the periodic payment that would apply after the payment adjustment that occurs at 18 months. However, § 1026.37(c)(1)(iii)(B) does not require disclosing a range merely because the periodic principal and interest payment may change once during a single year (unless such change may occur during the same year as the initial periodic payment). Nor does any other provision of § 1026.37(c)(1) require disclosing a range in that circumstance. The same example in comment 37(c)(1)(iii)(B)-1 also calls for an additional separate payment disclosure specifically for "the anniversary that immediately follows the occurrence of the multiple payments or ranges of payments that occurred during the second year of the loan." However, nothing in § 1026.37(c)(1) requires disclosing an additional separate payment disclosure for an anniversary in that circumstance. For example, § 1026.37(c)(1)(i)(D) does not require an

additional separate payment disclosure for an anniversary unless the anniversary "immediately follows" the occurrence of multiple events whereby the periodic principal and interest payment may change during a single year.

The Bureau proposed revisions to that example in comment 37(c)(1)(iii)(B)-1 to harmonize it with the requirements of § 1026.37(c)(1). As proposed, rather than disclosing as a single payment range, the example calls for separately disclosing, under a year two subheading, the payment that would apply on the first anniversary of the due date of the initial periodic payment and, under a year three subheading, the payment that would apply after the payment adjustment that occurs at 18 months. However, the Bureau requested comment on whether the text of § 1026.37(c)(1) should be amended to conform to the example in comment 37(c)(1)(iii)(B)-1 (instead of amending the comment to conform to the text of § 1026.37(c)(1)). The Bureau also requested comment on whether, rather than complying with a single, mandatory approach, creditors should have the discretion to disclose payments or ranges of payments in conformity with either the text of § 1026.37(c)(1) or the current examples in comment 37(c)(1)(iii)(B)-1.

Comments Received

A vendor supported the proposed amendments to comment 37(c)(1)(iii)(B)-1 to harmonize it with the requirements of § 1026.37(c)(1). The vendor stated that the proposed amendments are consistent with current comment 37(c)(3)(ii)-1, which provides that: if an event requiring an additional separate payment disclosure occurs on a date (*e.g.*, at 18 months) other than the anniversary of the due date of the initial periodic payment, and if no other events occur during that single year (*e.g.*, during year two) that otherwise require disclosure of multiple events under § 1026.37(c)(1)(iii)(B), then such payment event is disclosed beginning in the next year in

the sequence (*e.g.*, in year three); in other words, under both current comment 37(c)(3)(ii)-1 and proposed comment 37(c)(1)(iii)(B)-1, the payment event that occurs at 18 months is not disclosed as part of a range of payments in year two. The vendor further stated that, in the section-by-section analysis of § 1026.37(c)(3) in the TILA-RESPA Final Rule, the Bureau expressly concluded that such approach in current comment 37(c)(3)(ii)-1 ensures that consumers receive a disclosure that clearly and accurately discloses future changes to periodic payments.[76] The vendor asserted that that conclusion in the TILA-RESPA Final Rule similarly supports proposed comment 37(c)(1)(iii)(B)-1.

Regarding alternatives, the vendor stated that system reprogramming would be more complicated if the Bureau were to amend the text of § 1026.37(c)(1) to conform to the example in comment 37(c)(1)(iii)(B)-1 (instead of finalizing proposed comment 37(c)(1)(iii)(B)-1 to conform it to the text of § 1026.37(c)(1)). The vendor stated that conforming to comment 37(c)(1)(iii)(B)-1 would then require determining not only whether a change of payments occurred within a single year, but also require looking to previous years to determine whether multiple changes occurred in those years, in order to determine whether a year with a singular triggering event under § 1026.37(c)(1)(i)(A) should be treated as having multiple changes under § 1026.37(c)(1)(iii)(B), because the year before it had multiple changes (and whether such year had to be treated as having multiple triggering events as well, even though there is only a singular triggering event under § 1026.37(c)(1)(i)(A), because the year prior to the previous year had multiple triggering events).

[76] *See* 78 FR 79730, 79945 (Dec. 31, 2013).

The vendor objected to the possibility that, rather than requiring compliance with a single, mandatory approach, the Bureau might provide creditors with the discretion to disclose in conformity with either the current text of § 1026.37(c)(1) or the current examples in comment 37(c)(1)(iii)(B)-1. The vendor stated that such creditor discretion and lack of uniformity would inhibit consumers' ability to comparison shop.

A trade association objected to proposed comment 37(c)(1)(iii)(B)-1 as overly prescriptive and requested that creditors be afforded greater flexibility in deciding how to provide disclosures to consumers. A vendor requested that, instead of finalizing proposed comment 37(c)(1)(iii)(B)-1 to conform it to the text of § 1026.37(c)(1), the Bureau amend the text of § 1026.37(c)(1) to conform to the example in comment 37(c)(1)(iii)(B)-1. The vendor asserted that doing so would be more useful to consumers because, for example, a payment event that occurs at 18 months would be disclosed as part of a range of payments in year two, even if no other events occur during year two that require disclosure of multiple events under § 1026.37(c)(1)(iii)(B). The vendor stated that, where proposed comment 37(c)(1)(iii)(B)-1 would have such payment event disclosed in year three, but not in year two, the projected payments table would cause the consumer to believe mistakenly that the payment does not change in year two. The vendor further stated that, for those creditors whose current systems were programmed in reliance on current comment 37(c)(1)(iii)(B)-1, it would be extremely burdensome if the Bureau were to finalize proposed comment 37(c)(1)(iii)(B)-1 to conform it to the text of § 1026.37(c)(1). An individual compliance professional also requested that the Bureau amend the text of § 1026.37(c)(1) to conform to the example in comment 37(c)(1)(iii)(B)-1 and further requested that that approach be mandatory for all creditors.

A vendor group discussed how either alternative (*i.e.*, finalizing proposed comment 37(c)(1)(iii)(B)-1 to conform it to the current text of § 1026.37(c)(1) or, instead, amending the text of § 1026.37(c)(1)) could address uncertainty. The vendor group requested that, either way, the Bureau require compliance with a single, mandatory approach.

The vendor group noted that current § 1026.37(c)(1) does not provide for consistent disclosure of payment changes. During the same year as the initial periodic payment (*i.e.*, in year one), § 1026.37(c)(1)(iii)(B) calls for disclosing any payment change, even a single payment change, as part of a range in year one. But in years other than year one (*e.g.*, in year two), § 1026.37(c)(1)(iii)(B) calls for disclosing a range only if there are multiple payment changes in a single year. Otherwise, consistent with current comment 37(c)(3)(ii)-1, a single payment change is disclosed beginning in the next year in the sequence, *e.g.*, in year three (and not as part of a range in year two).

The vendor group requested that, if the Bureau finalizes proposed amendments to comment 37(c)(1)(iii)(B)-1 to conform it to the current text of § 1026.37(c)(1), the Bureau also amend § 1026.37(c)(1)(iii)(B) to further clarify that a range is disclosed when an event described in § 1026.37(c)(1)(i)(A) occurs prior to the first anniversary date of the date the initial periodic payment is due. The vendor group also requested that the Bureau make certain additional clarifying amendments to the introductory sentence of comment 37(c)(1)(iii)(B)-1 and to the example of a payment adjustment that occurs at 18 months in comment 37(c)(1)(ii)(B)-1.iii. The vendor group requested an implementation period of up to one year for reprogramming.

The Final Rule

For the reasons discussed below, the Bureau is adopting the revisions to comment 37(c)(1)(iii)(B)-1 substantially as proposed but with certain minor changes. The Bureau

concludes that comment 37(c)(1)(iii)(B)-1 as finalized is consistent with the requirements of § 1026.37(c)(1) as well as comment 37(c)(3)(ii)-1. As stated in the section-by-section analysis of § 1026.37(c)(3) in the TILA-RESPA Final Rule, the approach in current comment 37(c)(3)(ii)-1 ensures that consumers receive a disclosure that clearly and accurately discloses future changes to periodic payments.[77] The Bureau declines to adopt the alternative of amending the text of § 1026.37(c)(1) and comment 37(c)(3)(ii)-1 to conform to the example in current comment 37(c)(1)(iii)(B)-1 because, as noted above, that would unnecessarily require disclosing ranges and additional separate payments in more circumstances without providing overall benefit to consumers. The Bureau also concludes that a single, mandatory approach with respect to complying with § 1026.37(c)(1)(iii)(B) and comment 37(c)(1)(ii)(B)-1 will facilitate consumers' ability to comparison shop.

As to the commenter's concern that current § 1026.37(c)(1) does not provide for consistent disclosure of payment changes because § 1026.37(c)(1)(iii)(B) distinguishes between changes occurring in year one versus those occurring in other years, and also distinguishes between a year with multiple changes versus a year with a single change, the Bureau again declines to revisit major policy decisions in this rulemaking. Unlike the example in current comment 37(c)(1)(iii)(B)-1, which is being amended here because its contradiction of § 1026.37(c)(1) and comment 37(c)(3)(ii)-1 generated uncertainty, the Bureau believes that the distinctions in § 1026.37(c)(1)(iii)(B) are clear and, for a given type of loan, provide that all creditors will disclose the loan's payment provisions in the same manner. As to commenters' request to amend § 1026.37(c)(1)(iii)(B) to further clarify that a range is disclosed when an event

[77] 78 FR 79730, 79945 (Dec. 31, 2013).

described in § 1026.37(c)(1)(i)(A) occurs prior to the first anniversary date of the date the initial periodic payment is due, the Bureau concludes that such amendment is not warranted as § 1026.37(c)(1)(iii)(B) already provides for disclosing a range when an event described in § 1026.37(c)(1)(i)(A) occurs during the same year as the initial periodic payment or range of payments.

In part in response to commenters' concerns, the Bureau is finalizing the introductory sentence of comment 37(c)(1)(iii)(B)-1 with the phrase "multiple changes," instead of "changes," to further emphasize that § 1026.37(c)(1)(iii)(B) does not require disclosing a range merely because the periodic principal and interest payment may change once during a single year. The Bureau concludes that doing so will further alleviate uncertainty regarding this comment. Moreover, to provide clarification, the example in comment 37(c)(1)(iii)(B)-1.iii includes a cross-reference to § 1026.37(c)(3)(ii) and, consistent with current comment 37(c)(3)(ii)-1, expressly states that, beginning in the next year in the sequence (*i.e.*, in year three), the creditor separately discloses the periodic payment that would apply after the payment adjustment that occurs at 18 months.

In response to the commenter's request for an implementation period of up to one year with respect to this aspect of the proposal, as discussed in part VI below, the rule will be effective 60 days from publication in the *Federal Register*, but there will be an optional compliance period in effect until October 1, 2018. During the optional compliance period, a creditor has the option of complying based on the example in current comment 37(c)(1)(iii)(B)-1.

37(c)(4) Taxes, Insurance, and Assessments

37(c)(4)(iv)

Section 1026.37(c)(4) requires the disclosure on the Loan Estimate of the amount of periodic payments for taxes, insurance, and assessments. Section 1026.37(c)(4)(iv) requires a statement of whether the amounts disclosed under § 1026.37(c)(4)(ii) include payments for property taxes, amounts identified in § 1026.4(b)(8), and other amounts described under § 1026.37(c)(4)(ii) along with a description of any such other amounts, and an indication of whether such amounts will be paid by the creditor using escrow account funds. Comment 37(c)(4)(iv)-2 explains that creditors may indicate that only some of the amounts disclosed under § 1026.37(c)(4)(ii) will be paid using escrow account funds when that is the case. In the January 2015 Amendments, the Bureau removed "other than amounts for payments of property taxes or homeowner's insurance" from comment 37(c)(4)(iv)-2 to permit creditors to disclose that only a portion of the property taxes or homeowner's insurance payments were being paid from escrow, consistent with other situations where the creditor pays only a portion of the disclosed amounts from escrow.

In the preamble to the proposal the Bureau noted that it understands that uncertainty remains over the disclosure that only a portion of the property taxes and homeowner's insurance payments will be paid from escrow. The Bureau proposed to revise comment 37(c)(4)(iv)-2 to clarify that creditors may indicate that a portion of the property taxes and homeowner's insurance will be paid by the creditor using funds from the escrow account when that is the case.

The Bureau is finalizing as proposed the revisions to comment 37(c)(4)(iv)-2. The Bureau received two comments in support of the proposed revision to comment 37(c)(4)(iv)-2. However, one commenter asked the Bureau to define and address whether builder's risk

insurance is considered homeowner's insurance for purposes of the disclosures under § 1026.37(c)(4). The Bureau notes that it did not propose to address this matter in the proposal, and that treatment of builder's risk insurance premiums for purposes of these disclosures on the Loan Estimate may depend on the facts and context. Accordingly, the finalized revisions to comment 37(c)(4)(iv)-2 do not address the issue raised by the commenter.

37(c)(5) Calculation of Taxes and Insurance

37(c)(5)(i)

As detailed in the section-by-section analysis of § 1026.19, the Bureau is adopting amendments to § 1026.37(c)(5)(i) substantially as proposed. Section 1026.37(c)(5)(i), as finalized, specifically references the real property or cooperative unit securing the transaction. This conforming amendment to § 1026.37(c)(5)(i) reflects the change to the coverage of § 1026.19(e) and (f) to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit, regardless of whether a cooperative unit is treated as real property under State or other applicable law.

37(d) Costs at Closing

37(d)(2) Optional Alternative Table for Transactions Without a Seller or for Simultaneous Subordinate Financing

The Bureau's Proposal

Section 1026.37(d)(2) only permits creditors to use the optional alternative table in transactions without a seller. The Bureau has provided informal guidance that, in purchase transactions with simultaneous subordinate financing, the optional alternative table may be used for the simultaneous subordinate financing Loan Estimate if the first-lien Closing Disclosure will

record the entirety of the seller's transaction and the seller did not contribute to the cost of the subordinate financing. The Bureau proposed to amend § 1026.37(d)(2) and comment 37(d)(2)-1 to clarify that creditors may use the optional alternative table for simultaneous subordinate financing in purchase transactions if the first-lien Closing Disclosure will record the entirety of the seller's transaction. The Bureau specifically sought comment on whether it is appropriate to limit use of the optional alternative table for the disclosure of simultaneous subordinate financing purchase transactions to situations in which the first-lien Closing Disclosure will record the entirety of the seller's transaction.

Comments Received

Commenters included a title insurance company, software vendors, a bank, a loan originator, and a compliance professional. Most commenters supported the Bureau's proposal to allow the use of the optional alternative table if the first-lien Closing Disclosure will record the entirety of the seller's transaction. One commenter questioned what disclosures should be used when the optional alternative tables were used on the Loan Estimate because the creditor correctly concludes, based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer, that the Closing Disclosure for the first-lien loan will record the entirety of the seller's transaction, but a seller later agrees to contribute to the costs of the subordinate financing. The commenter suggested that the Bureau permit the use of the standard disclosures in situations where there is a valid change of circumstance following the provision of the optional alternative disclosures to the consumer. One commenter stated that the proposal could lead to variation among creditors and another commenter stated that the Uniform Closing Dataset (UCD) may not allow the use of the alternative disclosures for any transactions with sellers. Commenters asked the Bureau to clarify how to disclose the loan proceeds from the

simultaneous subordinate financing being applied to the first lien, noting that most creditors prefer that the subordinate lien is balanced to zero. A commenter explained that permitting the use of the alternative disclosures for simultaneous subordinate financing is extremely desirable for industry and consumers and should be effective immediately, but that revisions which clarify how simultaneous subordinate financing is disclosed on the standard forms require systems changes which will take between four and nine months to implement.

The Final Rule

For the reasons discussed below, the Bureau is finalizing the proposed amendments to § 1026.37(d)(2) and comment 37(d)(2)-1 with minor technical revisions. The Bureau appreciates the commenter's question regarding how to proceed under the proposal when the alternative table was properly used on the Loan Estimate, or even the Closing Disclosure, but a subsequent event causes the continued use of the alternative table to be impermissible. However, the Bureau declines to implement the commenter's suggestion to permit the use of standard disclosures in situations where there is a valid change of circumstance following the provision of the alternative disclosures to the consumer. On the Closing Disclosure, the calculating cash to close table requires a comparison of cash to close amounts disclosed on the Loan Estimate and the Closing Disclosure. Because the standard and alternative calculating cash to close tables do not contain the same components, amounts disclosed on a Loan Estimate's optional alternative calculating cash to close table could not be properly compared to amounts disclosed on a Closing Disclosure's standard calculating cash to close table. The Bureau is, however, directly addressing this concern by adding new comment 38(k)(2)(vii)-1, amending comments 38(d)(2)-1 and 38(j)-3, and amending proposed new comments 38(t)(5)(vii)(B)-1 and -2 to require the disclosure of the seller's contributions to the subordinate financing, if any, in the payoffs and

payments table on the simultaneous subordinate financing Closing Disclosure and the summaries of transactions table on the first-lien Closing Disclosure, when the alternative disclosures are used for the simultaneous subordinate financing. The result of these amendments is that the first-lien Closing Disclosure will be able to record the entirety of the seller's transaction. For a more detailed discussion of these new and revised comments, see the section-by-section analyses of § 1026.38(d)(2), (j), (k)(2), and (t)(5)(vii).

The Bureau recognizes that allowing the use of the optional alternative tables for simultaneous subordinate financing purchase transactions may cause variability in disclosure among creditors but concludes that consumers will not be harmed by such optionality. In addition, the Bureau understands that investor requirements may be more restrictive than the optionality provided by the Bureau. However, the Bureau believes flexibility is beneficial to some creditors, and the Bureau will continue to provide the option for creditors to use the optional alternative tables for simultaneous subordinate financing transactions with sellers.

The Bureau is addressing the commenter's question regarding the disclosure of simultaneous subordinate loan proceeds in the section-by-section analysis of § 1026.37(h)(2)(iii). The Bureau is clarifying how to disclose the proceeds of subordinate financing on the Loan Estimate for a first-lien transaction disclosed under § 1026.37(h)(2), such as a refinance transaction. The Bureau is also clarifying how a creditor may disclose, on the simultaneous subordinate financing Loan Estimate itself, the amount of subordinate loan proceeds that will be applied to the first-lien loan. The Bureau is making related revisions in the commentary to § 1026.38(j)(1)(v) and (t)(5)(vii)(B).

As related to a commenter's discussion of the time needed to implement these provisions, as discussed in part VI below, the final rule will be effective 60 days from publication in the *Federal Register*, but there will be an optional compliance period in effect until October 1, 2018.

37(f) Closing Cost Details; Loan Costs

Construction Loan Inspection and Handling Fees

The Bureau's Proposal

Section 1026.37(f) requires the disclosure of all loan costs associated with the transaction. Bureau staff previously has provided informal guidance that construction loan inspection and handling fees are loan costs associated with the transaction for purposes of § 1026.37(f), and the Bureau proposed new comment 37(f)-3 to memorialize this guidance.

Under comment 37(f)-3 as proposed, if such inspection and handling fees are collected at or before consummation, they are disclosed in the loan costs table in the same manner as any other loan cost. For example, if the creditor collects a handling fee at or before consummation to process the advances of a multiple-advance construction loan, the handling fee would be disclosed under § 1026.37(f)(1) as an origination charge the consumer will pay to the creditor for originating and extending the credit. If the creditor collects an inspection fee at or before consummation that will be used to pay a third-party inspector that is selected by the creditor, the fee would be disclosed under § 1026.37(f)(2) as an amount the consumer will pay for settlement services for which the consumer cannot shop.

Under proposed comment 37(f)-3, a creditor would disclose construction loan inspection and handling fees collected at or before consummation in the loan costs table. Such fees collected after consummation would be disclosed in a separate addendum to the Loan Estimate rather than in the loan costs table, as proposed comment 37(f)(6)-3, discussed below, would

provide. The creditor would not count inspection and handling fees to be collected after consummation for purposes of the calculating cash to close table. In proposing comment 37(f)-3, the Bureau noted its belief that disclosing the construction loan inspection and handling fees that are collected after consummation in an addendum would promote the informed use of credit by giving consumers loan cost information necessary to exercise such informed use, while preserving the accuracy of the total amount determined in the calculating cash to close table that must be provided to the consumer in the Loan Estimate.

Proposed comment 37(f)-3 included a cross-reference to proposed comment 37(f)(6)-3 for an explanation of the addendum that would be used to disclose post-consummation inspection and handling fees, as discussed below. Proposed comment 37(f)-3 also included cross-references to comments 38(f)-2 and app. D-7.viii, for additional explanations of the disclosure of such fees. Because the number of post-consummation construction loan inspections and disbursements may not be known at the time the disclosures are required to be provided, proposed comment 37(f)-3 included a cross-reference to comment 19(e)(1)(i)-1, which includes instruction on providing disclosures based on the best information reasonably available. Finally, proposed comment 37(f)-3 provided a cross-reference to § 1026.17(e) and its commentary for an explanation of the effect of subsequent events that cause inaccuracies in disclosures. The Bureau requested comment in particular on whether additional guidance on the effect of subsequent events in construction financing would provide additional clarity and what issues such additional guidance might address.

Comments Received

Comments on the disclosure of construction loan inspection and handling fees generally were favorable, although commenters also noted the difficulties in accurately disclosing fees to

be collected after consummation and the additional software development that the proposal would require. Commenters also requested additional clarifications related to making this disclosure, as described below.

A trade association agreed that construction loan inspection and handling fees should be disclosed to consumers seeking construction loans as these costs are often significant. However, this association stated its members were split on the use of an addendum for this purpose, as further noted in the discussion of proposed comment 37(f)(6)-3, below. A compliance specialist commented that proposed comment 37(f)-3 is a positive change that better facilitates the bank's processes. Several vendors commented on the software changes the disclosure of post-consummation inspection and handling fees would require, as further explained in the discussion of proposed comment 37(f)(6)-3, below.

Comments received from another compliance specialist did not favor the proposal. This commenter did not believe that disclosing the construction loan inspection and handling fees that are collected after consummation in an addendum would significantly promote the informed use of credit by giving consumers loan cost information necessary to exercise such informed use. This commenter pointed out a loan agreement contract may call for any number of fees to be assessed on the consumer for a variety of reasons after consummation, and construction loan inspection and handling fees should not be singled out for separate handling. A national trade association commented that it will be extremely difficult for creditors to provide accurate Loan Estimate disclosures for inspection fees because such fees are not known at the time the Loan Estimate is required to be provided to the consumer.

A consumer organization commented that permitting post-consummation fees of this type to be disclosed in an addendum raises the question of whether they should be included in the

Total of Payments, and urged the Bureau to clarify that those charges must be added to the Total of Payments disclosures on the Loan Estimate and Closing Disclosure. A professional association asked whether anticipated inspection fees in connection with multiple advance construction loan draws are subject to a tolerance from the Loan Estimate to the Closing Disclosures.

The Final Rule

The Bureau is adopting comment 37(f)-3 as proposed with minor modifications to provide additional consistency and clarity. Specifically, comment 37(f)-3 as finalized provides that the total of inspection and handling fees is disclosed in the loan costs table or in a separate addendum. Proposed comment 37(f)(6)-3, discussed below, provided that the total of inspection and handling fees to be collected after consummation is disclosed on an addendum, but proposed comment 37(f)-3 did not specify that the total of fees collected at or before consummation is disclosed in the loan costs table. While creditors may have assumed that proposed comment 37(f)-3 also required a single disclosure of the total amount of construction and handling fees, rather than an individual listing of each separate fee, the change made in finalizing comment 37(f)-3 confirms that the total fee is disclosed.

Otherwise, comment 37(f)-3 is adopted as proposed. Construction loan inspection and handling fees are loan costs uniquely associated with construction transactions and, as a commenter agreed, they are often significant amounts. Because of the amounts involved, the Bureau considers that disclosure of these amounts is particularly helpful in promoting informed use of credit, and therefore merit separate handling. The Bureau recognizes the difficulty of providing accurate disclosures at or before consummation of amounts that will be collected after consummation. For that reason, comment 37(f)-3 includes a cross-reference to comment

19(e)(1)(i)-1, which includes instruction on providing disclosures based on the best information reasonably available. Comment 37(f)(6)-3, which is discussed below and explains the use of an addendum to disclose inspection and handling fees collected after consummation, provides examples of what the best information reasonably available could be for such disclosures. Disclosures made consistent with these comments would be considered accurate, even though the inspection and handling fees actually collected after consummation in a particular transaction may differ from the amount of fees in previous similar transactions upon which the disclosures were based. To underscore this outcome, comment 37(f)-3 also includes a cross-reference to § 1026.17(e) and its commentary. Section 1026.17(e) generally provides that, if a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation. Pursuant to that section, the disclosure of inspection and handling fees that is based on the best information reasonably available but that becomes inaccurate because of an event occurring after consummation, for example, topographical features are discovered or weather-related events occur that affect the complexity and timing of the inspections and therefore affect the amount or timing of the fees, would not be considered a violation.

The impact of basing the disclosure of inspection and handling fees on the best information reasonably available and taking into account the effect of subsequent events is relevant for responding to the commenter that asked whether anticipated inspection fees in connection with multiple advance construction loan draws are subject to a tolerance if the amount disclosed changes between the Loan Estimate and the Closing Disclosures. These fees are subject to the same tolerance as any other fees disclosed as loan costs depending on the category into which they fall under § 1026.19(e)(3), such as origination charges or fees for a

service the consumer can or cannot shop for, regardless of whether they are paid at or before closing and disclosed on the disclosures, or paid after consummation and disclosed on the addendum. Thus, if the fees are collected at or before consummation and are disclosed as "Services Borrower Did Not Shop For," they would be subject to the same tolerance as other amounts under that heading. However, when such fees are to be collected after consummation and disclosed on an addendum based on the best information reasonably available, if a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation, as provided by § 1026.17(e).

To provide an example of how the tolerance requirements would apply, in a case where a creditor does not permit the consumer to shop for the construction inspection service provider, the inspection and handling fees would be in the "zero tolerance" category under section § 1026.19(e)(3)(i). If, at the time a Loan Estimate must be provided, the creditor has only a general sense of the scope and site of the construction (as is often the case), the creditor may disclose a total amount of inspection and handling fees based on the total amount of fees the creditor has previously charged in construction transactions the creditor believes to be similar to the present transaction. The creditor may also disclose a total amount of fees based on the estimate the creditor uses in setting the construction transaction's commitment amount. In either case, the creditor will likely consider the estimated number of inspections that will be required and the estimated cost of each inspection to arrive at a total, thus using the best information reasonably available. If after the Loan Estimate is provided the creditor discovers, for example, that the construction site has features that will require additional work and therefore additional and more complex inspections, the best information reasonably available to the creditor at that time is that the total inspection and handling fees will be greater than initially estimated. In such

a case the creditor may issue a revised Loan Estimate pursuant to § 1026.19(e)(3)(iv) to reset the tolerance for the inspection and handling fees.

Further, if after consummation additional topographical features are discovered or weather-related events occur that result in additional or more costly inspections, consistent with § 1026.17(e) there is not a violation when a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures. The example described here would apply both when the inspection and handling fees are disclosed in the loan costs table because they are collected at or before consummation and when such fees are disclosed in a separate addendum because they are collected after consummation.

Therefore, if the inspection and handling fees are in a category of fees that is subject to tolerances and these fees change between the Loan Estimate and the Closing Disclosure without the disclosure of revised estimates that can reset tolerances, the applicable tolerance violation could be present. However, if the fees change after consummation because of subsequent events, as described in § 1026.17(e), there would not be a tolerance violation.

The Bureau agrees with the commenter that noted construction loan inspection and handling fees are Loan Cost charges that must be added to the Total of Payments disclosures on the Loan Estimate and Closing Disclosure. This clarification will be provided in comment app. D -7.viii, which is also being finalized in this final rule as discussed below as comment app D-7.vii. Although commenters assumed, correctly, that draw fees are included as inspection and handling fees, the Bureau is specifically including draw fees in comment 37(f)-3 for greater clarity.

37(f)(6) Use of Addenda

The Bureau's Proposal

The Bureau proposed to add comment 37(f)(6)-3 to provide instruction for the addendum that would be used to disclose post-consummation construction loan inspection and handling fees. If, pursuant to proposed comment 37(f)-3, a creditor is required to disclose construction loan inspection and handling fees that will be collected after consummation, proposed comment 37(f)(6)-3 explained that the creditor discloses the total of such fees under the heading "Inspection and Handling Fees Collected After Closing" in an addendum. Proposed comment 37(f)(6)-3 also cross-referenced comment 19(e)(1)(i)-1 and explained that, if the amount of post-consummation inspection and handling fees is not known at the time the disclosures are provided, the disclosures in the addendum would be based upon the best information reasonably available. To provide additional clarity, proposed comment 37(f)(6)-3 also included an example of the best information reasonably available standard for purposes of disclosing post-consummation inspection and handling fees by providing such information could include amounts the creditor has previously charged in similar transactions.

Comments Received

The comments on the use of an addendum to disclose post-consummation inspection and handling fees collected after consummation focused on the technical aspects of the addendum and related software implementation issues. Comments from a trade association stated its members were split on the use of an addendum for disclosing construction loan inspection and handling fees. The commenter noted concerns that the use of addenda may result in some borrowers overlooking these fees, although use of an addendum and omitting the fees from the cash to close table seemed appropriate if the creditor permits the consumer to take advances on

the construction loan to cover these fees. The commenter proposed that, if the creditor does not permit advances on the construction loan to cover these costs, creditors should disclose the fees and factor them into the cash to close table on the Loan Estimate, but for the Closing Disclosure the fees should be disclosed on a separate addendum because the Closing Disclosure only permits the disclosure of borrower-paid costs in columns labeled "At Closing" or "Before Closing."

Comments from a vendor's group asked for clarification of whether the heading "Inspection and Handling Fees Collected After Closing" should be formatted pursuant to comment 37(o)(5)-5, which requires that information disclosed on a separate page "should be formatted similarly to form H-24 of appendix H to this part, so as not to affect the substance, clarity, or meaningful sequence of the disclosure" or in any style of the creditor's choosing, so long as the heading meets the "clear and conspicuous" standards set forth in § 1026.37(o)(1) and associated commentary. The commenter noted proposed comment 37(f)(6)-3 makes reference to disclosing post-consummation inspection and handling fees on "an addendum" and asked the Bureau to clarify that this information may be included in any addendum provided in connection with the Loan Estimate, which contains other additional information, for example, pursuant to § 1026.37(f)(6), or whether this information should be disclosed in a separate addendum. The commenter also estimated that software development for disclosure of post-consummation inspection and handling fees on a separate section of the addendum would require significant time to implement.

A vendor commented that disclosure of post-consummation inspection and handling fees on a separate section of an addendum would require significant software development. Another vendor commented that it generally supports the effort to provide clarification regarding

inspection and handling fees, but believed that the programming required to differentiate fees paid at, before, and after consummation for the disclosures would be extremely complicated. Technology companies would be required to reprogram their software to provide for a new category of closing costs, with new data points that would need to be integrated between the different software companies to ensure their proper disclosure. The commenter believed a better alternative would be to allow creditors to disclose fees collected after consummation using their own methods in documentation that is separate from the Loan Estimate and Closing Disclosure, such as in their cover letter to consumers or in a separate page.

The Final Rule

The Bureau is adopting comment 37(f)(6)-3 generally as proposed, but with some modifications in response to comments received on proposed comments 37(f)-3 and 37(f)(6)-3. Instead of referring to "post-consummation charges" as the proposed comment did, comment 37(f)(6)-3 as adopted is modified to emphasize that an addendum is used only if the fees are to be collected after consummation. This modification is made for consistency with comment 37(f)-3, which refers to inspection and handling fees collected at or before consummation and after consummation. This modification should also provide greater clarity because the use of "post-consummation fees" may create an impression that an addendum may be used for inspection and handling fees collected both at or before consummation and after consummation if the service that the fee covers is provided after consummation. If construction loan inspection and handling fees are collected at or before consummation, they are disclosed in the loan costs table and are counted for purposes of the calculating cash to close table. Only if the fees are expected to be collected after consummation are they disclosed in an addendum to the Loan Estimate and in an addendum to the Closing Disclosure and not counted for purposes of the

calculating cash to close table. The Bureau considers when fees are collected to be a clearer determinant of when to use an addendum than if a creditor permits the consumer to take advances on the construction loan to cover these fees, as suggested by a commenter. An advance to cover these fees may be taken at or after consummation. If the advance is taken at consummation, the fee is collected at consummation and an addendum would not be used.

Thus, if a consumer pays inspection and handling fees in cash that is not from loan proceeds at consummation, or if the fees are financed at consummation, they are considered collected at consummation and are disclosed in the Loan Costs table. In a construction transaction, a fee is financed at consummation if an advance to cover the fee is taken at consummation. However, if the creditor permits the consumer to take advances after consummation to cover construction loan inspection and handling fees, the fees are collected after consummation and would be disclosed on a Loan Estimate addendum and a Closing Disclosure addendum. Further, because the creditor would have estimated the amount of inspection and handling fees for purposes of setting the commitment amount to allow for sufficient funds to be available for advances to cover inspection and handling fees, comment 37(f)(6)-3 is also amended to include such estimates as an additional example of the best information reasonably available for inspection and handling fee disclosures.

In response to commenters that requested additional clarification on the form of the addendum, comment 37(f)(6)-3 is further modified to specify that the total of construction loan inspection and handling fees is disclosed in an addendum, which may be the addendum pursuant to § 1026.37(f)(6) or any other addendum or additional page under § 1026.37. A cross-reference to comment 37(o)(1)-1, which explains the clear and conspicuous standard, is also added. Because comment 38(f)-2, discussed below, includes a reference to comment 37(f)(6)-3 for

information on disclosing inspection and handling fees on the closing disclosure, a clarifying statement is added for consistency that for purposes of comment 38(f)-2, the addendum may be any addendum or additional page under § 1026.38.

To preserve a greater degree of consistency and clarity that such fees are included in the transaction, the Bureau is not adopting the suggestion from a commenter to allow creditors to disclose fees collected after consummation using their own methods in documentation that is separate from the Loan Estimate and Closing Disclosure. With respect to comments concerning the software development and implementation times estimated for these amendments, the Bureau refers to the discussion in part VI, below, regarding the final rule's effective date and optional compliance period.

37(g) Closing Cost Details; Other Costs

37(g)(4) Other

The Bureau's Proposal

Section 1026.37(g)(4) requires the disclosure of any other amounts (other than amounts disclosed under § 1026.37(g)(1) through (3)) in connection with the transaction that the consumer is likely to pay or has contracted, with a person other than the creditor or loan originator, to pay at consummation and of which the creditor is aware at the time of issuing the Loan Estimate. Comment 37(g)(4)-4 provides examples of items that are disclosed under § 1026.37(g)(4), including but not limited to commissions of real estate brokers or agents, additional payments to the seller to purchase personal property pursuant to the property contract, homeowner's association and condominium charges associated with the transfer of ownership, and fees for inspections not required by the creditor but paid by the consumer pursuant to the property contract. Currently, amounts for construction costs, payoff of existing liens, or payoff

of unsecured debt may be, but are not required to be, disclosed under § 1026.37(g)(4). If such amounts are not disclosed under § 1026.37(g)(4), they are factored into the cash to close calculations but are not otherwise disclosed on the Loan Estimate. The Bureau proposed to revise comment 37(g)(4)-4 to require the disclosure of construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of existing liens secured by the property identified under § 1026.37(a)(6), or payoff of unsecured debt under § 1026.37(g)(4), unless those items are disclosed under § 1026.37(h)(2)(iii) on the optional alternative calculating cash to close table.

It was expected that the proposed revisions to comment 37(g)(4)-4, together with the proposed revisions to comment 38(g)(4)-1 discussed in the section-by-section analysis of § 1026.38(g)(4), would create greater consistency between disclosures on the Loan Estimate and Closing Disclosure for the clear and conspicuous disclosure of these amounts, thus facilitating consumer understanding. The preamble of the proposed rule also stated the Bureau did not intend, by requiring disclosure under § 1026.37(g)(4) of amounts for construction costs, payoff of existing liens, and payoff of unsecured debt, to subject them to a different determination of good faith than currently provided for in § 1026.19(e)(3).

In proposing the revisions to comment 37(g)(4)-4, the Bureau noted that it had considered requiring the disclosure of construction costs, payoff of existing liens, and payoff of unsecured debt under the summaries of transactions table on the Closing Disclosure under § 1026.38(j)(1)(v), instead of as "closing costs" under §§ 1026.37(g)(4) and 1026.38(g)(4), but did not because the Loan Estimate does not have a comparable summaries of transactions table. The Bureau noted that disclosing these costs on the summaries of transactions table on the Closing Disclosure would not result in these costs being enumerated consistently on both the

Loan Estimate and the Closing Disclosure and would interfere with the comparability between the Loan Estimate and the Closing Disclosure.

The Bureau also noted that it had considered requiring the disclosure of construction costs on an addendum, instead of as other closing costs under § 1026.37(g)(4) on the Loan Estimate and § 1026.38(g)(4) on the Closing Disclosure. The construction costs would then be factored into the calculating cash to close table calculations with the sale price to yield an accurate cash to close amount. However, the Bureau noted this approach could add complexity to the calculations required on the Closing Disclosure.

The proposed revision of comment 37(g)(4)-4 also cross-referenced proposed comment app. D-7.vii for an explanation of the disclosure of construction costs for a construction or construction-permanent loan and proposed comment app. D-7.viii for an explanation of the disclosure of construction loan inspection and handling fees.

Comments Received

Comments on the proposed revision of comment 37(g)(4)-4, while generally supportive of the attempt to clarify the disclosure of payoffs and construction costs, did not generally favor the proposed method of disclosure. Some commenters did support the proposal or requested that alternative methods of disclosure be allowed to continue. A multi-bank financial holding company commenter stated it supported the proposed change, but did not explain the basis of its support. A consumer organization supported the proposal, stating consumer understanding is enhanced when these amounts appear in corresponding tables on the Loan Estimate and Closing Disclosure. A compliance specialist commenter also supported the proposed required disclosure of the three items under § 1026.37(g)(4) or (h)(2)(iii) as applicable, stating the proposal would create a standardized disclosure framework for all creditors, but strongly opposed the disclosure

of construction costs on an addendum.

A nonprofit housing organization commenter supported the proposed disclosures but noted that the Bureau did not directly address financed funds placed into escrow for repairs to be completed after closing. This commenter recommended adoption of a new line in the calculating cash to close table called "Rehabilitation Escrow" where funds financed for home rehabilitation can be disclosed, stating that such disclosure will allow consumers to see all of the funds for the transaction in the calculating cash to close table without inaccurately labeling the rehabilitation funds as loan costs or closing costs. Two state bank association commenters and two national industry association commenters requested that the Bureau permit alternative methods of disclosing construction costs including disclosure on the alternative form in the payoffs and payments table, so long as the method used discloses the costs and the cash to close table and summaries of transactions table balance. These commenters stated parties should not be required to change programming that is reasonable and for which significant time and expense were spent for an alternative means of disclosure that the commenters believed did not provide a positive gain for consumers.

However, a majority of the comments, including comments from financial institutions, title insurers, state and national industry associations, and software vendors all opposed the proposed required disclosure of construction costs, payoff of existing liens, and payoff of unsecured debt under §§ 1026.37(g)(4) and 1026.38(g)(4).

Several commenters believed that significant confusion would result from the proposed revision of comment 37(g)(4)-4. A financial institution commenter stated the proposed changes would confuse consumers, creditors, settlement agents, and real estate agents who for decades have not considered the costs covered by the proposed comment as closing costs. The

commenter believed that disclosing funds available to draw through construction under "Other Costs" would significantly overstate a borrower's "Total Closing Costs," which the commenter believed to be contrary to the overall purpose of providing clear and conspicuous disclosure related to costs and terms associated with a loan transaction. A vendor commenter also believed that the proposed method of disclosing payoffs and holdbacks would likely be confusing to consumers. The commenter stated consumers expect that the disclosures will categorize fees and charges to obtain and close the loan separately from the costs that are directly or indirectly related to the purpose of their transaction, such as payoffs of a prior lien or unsecured debt, or construction costs in a construction loan.

Two trade association commenters stated the proposal will result in making the closing costs in many loans, including construction loans, appear to be enormous, causing concern and confusion on the part of consumers. A title insurer commenter and a vendor commenter were concerned that many consumers who see a large amount of closing costs on page one of the disclosures may be discouraged from continuing to the more detailed and technical information later in the disclosures. The commenters believed consumers may even decide not to move forward with a refinance or debt consolidation transaction that may be in their best interest, because they may believe the closing costs of the transaction to be prohibitively expensive.

A vendor commenter and a title insurer commenter stated that under the proposal the actual closing costs that a consumer could negotiate or shop for would be "framed" within a much larger amount of total closing costs. The commenters believed such a framing effect may cause the actual closing costs in the transaction to be more difficult to discern by consumers and would likely hinder consumers' ability to compare the actual closing costs between lenders when shopping for mortgage loans. These commenters also believed consumers may view the actual

closing costs for which they can negotiate or shop as less significant, because they could represent a small percentage of the total closing costs. A mortgage creditor commenter pointed out that § 1026.37(g)(4)(iii) limits the number of items disclosed in section H of the Loan Estimate to five. If more than four items need to be disclosed, their charges are aggregated on the fifth line of section H of the Loan Estimate. The commenter stated that as a result of such aggregation, the disclosure of construction costs, payoff of existing liens, and payoff of unsecured debt would often disappear into the aggregate amount along with other charges.

A title insurer and a vendor commented that a consumer obtaining a mortgage loan for the purpose of consolidating credit card debt would likely be confused to see such credit card debt included in the amount of closing costs, because they would instead consider the payoffs of credit card debt to be a reason they are paying closing costs. A mortgage lender commenter stated that credit card debt paid at closing on a purchase transaction is distinctly different than a "charge" in connection with the transaction. A group of vendors commented that the proposed revision can lead to confusion and misapplication of the concept of "third-party services" by creditors. These commenters asked if a payoff is a "third-party service not required by the creditor," what other types of costs could also be considered a "third-party service not required by the creditor" and subject to good faith tolerance rather than a more restrictive tolerance? A possible unintended outcome could be that consumers may end up paying more at consummation than what is permitted. While such overpayments may ultimately be refunded, consumers would still be inconvenienced because of such confusion.

Two trade association commenters, a financial institution commenter, a title insurer commenter, and a vendor commenter stated that varying the disclosure methodology between the standard and the alternative forms would be confusing to consumers, especially consumers

comparing loans between creditors using the different versions of the disclosures. These commenters noted a creditor choosing to use the alternative form will show significantly lower closing costs than a creditor that uses the standard form.

Several commenters stated that the proposed required disclosure is not an approach that has been tested extensively with regard to consumers. A title insurer commenter and a trade association commenter noted that consumer testing prior to issuance of the TILA-RESPA Final Rule did not include the payoff of the prior mortgage loan as a closing cost. A vendor commenter believed that consumer testing of this proposed method of disclosure of payoffs and holdbacks as closing costs should be conducted before its finalization, in light of the change it represents from the original design and testing of the disclosures.

A group of vendors and an individual vendor commented that currently, all of their systems can support construction costs in "Section H. Other." However, these commenters noted the payment of construction costs is the purpose for obtaining the loan, just as the purchase of the real estate is the purpose of obtaining a general purchase loan. The commenters also noted the Bureau is not proposing that the sale price must be disclosed in "Section H. Other" even though it is also a purpose for which loan proceeds must be used. The commenters asked whether consumers would understand why the construction costs are a closing cost but the sales price is not. The commenters agreed if the proposed disclosure is mandated for all lenders, results will be consistent when shopping, although that does not mean that it is clear to consumers why these disclosures are described as closing costs.

Two trade association commenters and a financial institution commenter stated the proposed revision of comment 37(g)(4)-4 can create both software and training issues, as loans with a seller would require entirely different instruction than those transactions where use of the

alternate form is allowable. These commenters noted that creditors would be required to input the covered costs into their systems differently, depending on which version of the disclosures they were using, which will create software and staff training difficulties.

Three trade association commenters stated the proposed addition of a specific required method of disclosing construction costs would require significant re-programming to the cash to close, loan costs, and summary of transactions calculations. Two of these commenters noted that many different software systems may be involved in the origination of a loan and the production of the disclosures, including loan origination software, lender's document production software, title production software, and collaborative closing portals. The commenters pointed out that these software systems may program the disparate set of payoffs and construction costs between the standard and alternative disclosures differently. Some systems may require coding of such costs only as payoffs and then automatically place the data differently between the versions of the disclosure, while some may require the user to code such costs differently as payoffs or closing costs between the different forms. The commenters concluded the difference in data formats may increase costs and frustrate the industry's efforts to use uniform data standards.

A financial institution commenter disagreed with the comparability goal of the proposed revision, which would not have permitted disclosure of construction costs, payoff of existing liens, and payoff of unsecured debt under the summaries of transactions table on the Closing Disclosure under § 1026.38(j)(1)(v) because the Loan Estimate does not have a comparable summaries of transactions table. This commenter believed the comparability goal should not be met at the expense of the goal of developing clear disclosures that help consumers understand the credit transaction and closing costs. A trade association commenter also took issue with the comparability goal of the proposal. This commenter stated disclosure on the summaries of

transactions table is a method that is commonly used now by many creditors and closing agents to disclose construction costs or payoffs when the standard Closing Disclosure is used and is understood by consumers and settlements agents.

A title insurer, an asset manager, and a group of vendors noted that the proposal did not account for disclosure of payoffs of other types of secured debt, such as a loan secured by an automobile, which should be treated consistently with other payoffs. These commenters recommended that the disclosure for payoff of any existing debt be treated consistently.

Two trade association commenters urged excluding temporary construction financing transactions from coverage of the TILA-RESPA Rule, leaving only the permanent phase of a construction-permanent loan subject to the TILA-RESPA integrated disclosure requirements. These commenters noted the exclusion of such construction financing transactions from other Regulation Z requirements, such as those for high-cost mortgages and for making ability-to-repay determinations.

Several commenters stated that payoffs and holdbacks should not be disclosed as closing costs under §§ 1026.37(g)(4) and 1026.38(g)(4) and instead suggested alternative disclosures. A title insurer commenter, a vendor commenter, two trade association commenters, and three creditor commenters recommended these costs should be disclosed in the "Adjustments and Other Credits" row of the calculating cash to close table under § 1026.37(h)(1)(vii) on the Loan Estimate and under § 1026.38(i)(8) on the Closing Disclosure, and in the summaries of transactions table on the Closing Disclosure under § 1026.38 (j)(1)(v). The commenters noted current comment 38(j)(1)(v)-1 clarifies that, "amounts paid to any existing holders of liens on the property in a refinance transaction" are disclosed in the summaries of transactions table pursuant to § 1026.38(j)(1)(v). These commenters generally stated such disclosures would ensure that

closing costs appear together on the forms, but separate from payoffs and construction costs, which consumers do not think of as closing costs. A mortgage lender commenter stated it would seem to be more appropriate to provide for the availability of a version of the payoffs and payments table for purchase transactions in a consistent manner with transactions that do not involve a seller.

Commenters also noted concerns with the reference to the "bona fide cost of construction" in proposed comment 37(g)(4)-4. A vendor group commenter requested that the language be modified to avoid any unintended consequences of stating that construction costs and payoffs are subject to good faith tolerance, subject to only whether the costs are bona fide or not. As an alternative, the commenter requested an explanation of how these costs are still subject to good faith tolerance as long as they are bona fide. An asset manager commenter stated the purpose behind the introduction of the "bona fide" requirement was not clear, and urged the Bureau to omit it from the final rule as it introduces confusion and uncertainty into the process.

The Final Rule

In response to the comments received, the Bureau is not adopting the revision of comment 37(g)(4)-4 as proposed. Instead of requiring disclosure under § 1026.37(g)(4) of construction costs in connection with the transaction, payoff of existing liens secured by the property identified under § 1026.37(a)(6), and payoff of other secured or unsecured debt, the final rule provides for the disclosure of such amounts under § 1026.38(j)(1)(v). Specifically, as discussed below in the section-by-section analysis of § 1026.38(j)(1)(v), comment 38(j)(1)(v)-2 as finalized identifies these amounts as examples of amounts that are disclosed under § 1026.38(j)(1)(v). The Bureau agrees with the commenters that noted payoffs of other types of secured debt, such as a loan secured by an automobile or another property, should be treated

consistently with other payoffs.

In the preamble to the proposal, the Bureau noted that it had considered proposing disclosure of these amounts under § 1026.38(j)(1)(v) in the summaries of transactions table, but had been concerned that disclosure of the amounts under § 1026.38(j)(1)(v) would interfere with the comparability between the Loan Estimate and the Closing Disclosure.[78] However, the Bureau has been persuaded by the comments raising concerns about the potential confusion that may result were these amounts to be disclosed on the Loan Estimate as "Other Costs", and has concluded that the comparability goal should not override considerations of clarity. The Bureau is, therefore, providing for the disclosure of these amounts under § 1026.38(j)(1)(v).

In transactions subject to § 1026.37(h)(1)(iii)(A)(*2*) and (B), a creditor factors construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of existing liens secured by the property identified under § 1026.37(a)(6), and payoff of other secured or unsecured debt into the funds for borrower calculations under § 1026.37(h)(1)(v). When these amounts are disclosed under § 1026.38(j)(1)(v) on the Closing Disclosure, they are included in existing debt that is factored into the funds for borrower calculation under § 1026.37(h)(1)(v). Comment 37(h)(1)(v)-2 explains that the total amount of all existing debt that is used in the funds for borrower calculation is the sum of the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v), as applicable.

This rule does not factor the disclosure of construction costs, payoff of existing liens, and payoff of unsecured debt into the adjustments and other credits calculation under

[78] 81 FR 54317, 54340 (Aug. 15, 2016).

§ 1026.37(h)(1)(vii) for all transactions as requested by some of the commenters. The Bureau is concerned that including these amounts in the adjustments and other credits calculation would result in a very high estimated cash to close disclosure under § 1026.37(h)(1)(viii) because the loan amount is not factored into the calculation for the § 1026.37(h)(1)(vii) disclosure. As an example, including construction costs of $100,000 in adjustments and other credits on a Loan Estimate where the total closing costs under § 1026.37(h)(1)(i) are entirely offset by closing costs financed under § 1026.37(h)(1)(ii) and the disclosures under § 1026.37(h)(1)(iii) through (vi) are each calculated to be $0 would result in an estimated cash to close amount of $100,000.

However, there are circumstances when the payoff of other secured and unsecured debt would be included in the adjustments and other credits calculation under § 1026.37(h)(1)(vii) rather than in the funds for borrower calculation under § 1026.37(h)(1)(v). Because transactions using the down payment and funds for borrower calculation under § 1026.37(h)(1)(iii)(A)(*1*) do not also use the funds for borrower calculation under § 1026.37(h)(1)(v), these transactions account for payoffs of secured or unsecured debt by including such amounts in the adjustments and other credits calculation under § 1026.37(h)(1)(vii). Comment 37(h)(1)(vii)-6 includes payoffs of secured or unsecured debt in a purchase transaction disclosed using the formula under § 1026.37(h)(1)(iii)(A)(*1*) as an example of amounts disclosed under § 1026.37(h)(1)(vii). This example is consistent with the revision made by this rule to § 1026.37(h)(1)(vii). Under the revision, amounts that are required to be paid by the consumer at closing in a transaction subject to § 1026.37(h)(1)(iii)(A)(*1*) are included in the § 1026.37(h)(1)(vii) calculation. A payoff of other secured or unsecured debt may be required to be paid in a purchase transaction subject to § 1026.37(h)(1)(iii)(A)(*1*), which is a transaction in which the loan amount does not exceed sale price. In such circumstances, the payoff amounts, such as for a car loan, are included in the

§ 1026.37(h)(1)(vii) calculation, rather than the § 1026.37(h)(1)(v) calculation.

The Bureau declines to exclude construction financing transactions from coverage as suggested by a set of commenters. Although such transactions are excluded from certain Regulation Z requirements, they have long been subject to Regulation Z disclosure requirements as evidenced by the history of Appendix D, which provides special procedures that creditors may use, at their option, to estimate and disclose the terms of multiple-advance construction loans. As stated in the TILA-RESPA Final Rule preamble, the Bureau believes that including construction-only loans within the scope of the integrated disclosure requirements effectuates the purposes of TILA under TILA section 105(a), because it would ensure meaningful disclosure of credit terms to consumers and facilitate compliance with the statute.[79] The "bona fide" language in proposed comment 37(g)(4)-4 is omitted in this final rule in response to the commenters that noted it may lead to misunderstanding and confusion.

37(g)(6) Total Closing Costs

37(g)(6)(ii)

The Bureau's Proposal

Section 1026.37(g)(6)(ii) requires creditors to disclose the amount of any lender credits. Comment 37(g)(6)(ii)-1 cross-references comment 19(e)(3)(i)-5, which states that lender credits, as identified in § 1026.37(g)(6)(ii), represent the sum of non-specific lender credits and specific lender credits. However, comment 37(g)(6)(ii)-1 describes lender credits as payments from the creditor to the consumer that do not pay for a particular fee on the disclosures. To correct this inconsistency, the Bureau proposed to revise comment 37(g)(6)(ii)-1 to conform with the

[79] 78 FR 79730, 79793 (Dec. 31, 2013).

language in comment 19(e)(3)(i)-5. For the reasons discussed below, the Bureau is adopting the modifications to comment 37(g)(6)(ii)-1 as proposed.

Comments Received

The Bureau received comments on this proposal from industry individuals, a loan origination software vendor, a financial services advocacy organization, a large bank, a state bank trade association, a law firm, and a national credit union trade association. Generally commenters supported the proposal, and one industry commenter recommended implementing the proposal immediately. Some commenters stated that the proposal provides clearer guidance in regard to completion of §1026.37(g)(6)(ii) on the Loan Estimate.

Several commenters did not oppose the proposal but posited other options for the Bureau to consider. An industry commenter requested the Bureau provide a concrete definition for "specific lender credit" and "general lender credit." They further suggested that the Bureau provide an alternate method of disclosing lender credits. Other commenters noted that there is consumer confusion regarding disclosure of lender credits between the Loan Estimate and Closing Disclosure, due to the "Paid by Others" column, which only appears on the Closing Disclosure. An industry commenter recommended that § 1026.37(g)(6)(ii) be revised to allow the disclosure of lender credits for the interest rate chosen, separate from other lender credits.

Several commenters requested additional guidance from the Bureau on the tolerance implications of disclosing lender credits, including a request for additional guidance as to when it would be appropriate for a lender credit to decrease based on a changed circumstance or a borrower-requested change. Many commenters requested additional guidance for situations where the actual cost of a service increases from the estimate, and a creditor has provided a lender credit covering the entire estimated cost of a service. Commenters requested that

comments 19(e)(3)(i)-5 and -6 be amended to state that where an actual cost decreases from the estimated cost provided to the consumer, a specific lender credit attached to that cost should be permitted to decrease with it.

The Final Rule

The Bureau is adopting the modifications to comment 37(g)(6)(ii)-1 as proposed. In response to the commenter question on the definition of "specific" lender credits and "general" lender credits, the Bureau references the definition in comment 19(e)(3)(i)-5, which states that specific lender credits are specific payments, such as a credit, rebate, or reimbursement, from a creditor to the consumer to pay for a specific fee. Non-specific lender credits are generalized payments from the creditor to the consumer that do not pay for a particular fee on the disclosures provided pursuant to § 1026.19(e)(1). With respect to commenters who sought alternate methods for disclosing lender credits or who expressed concern about the "Paid by Others" column, the Bureau declines to make changes that were not proposed and that would require significant changes to the disclosure forms themselves. Wholesale changes to the manner in which costs are displayed on the forms would require substantial reprogramming and the Bureau believes that, for changes of this nature, it would be prudent to first test them for consumer understanding.

The Bureau also declines to make commenter-requested changes to comments 19(e)(3)(i)-5 and -6 to state that where an actual cost decreases from the estimated cost provided to the consumer, a specific lender credit attached to that cost should be permitted to decrease with it. In response to such request and other commenter requests for clarity on the tolerance implications of lender credits on the Loan Estimate, § 1026.19(e)(3)(iv) already provides when a creditor may use a revised estimate for purposes of the § 1026.19(e)(3) good faith determination.

The section-by-section analysis of § 1026.19(e)(3)(i) in the TILA-RESPA Final Rule stated that, with respect to whether a changed circumstance or borrower-requested change can apply to the revision of lender credits, the Bureau believes that a changed circumstance or borrower-requested change can decrease such credits, provided that all of the requirements of § 1026.19(e)(3)(iv) are satisfied.[80] Generally, lender credits are determined by the terms of the legal obligation between the creditor and consumer. Comment 17(c)(1)-1 requires that the disclosures reflect the terms to which the consumer and creditor are legally bound at the outset of the transaction and comment 19(e)(1)(i)-1 requires disclosures based on the best information reasonably available at the time the disclosure is provided to the consumer. Comment 17(c)(1)-1 also specifies that the legal obligation between the creditor and consumer is determined by applicable State law or other law. Sales contracts, government program guidelines, or other requirements may be the basis for the legal obligation between the creditor and consumer. A creditor must retain evidence of compliance with the requirements of § 1026.19(e), including § 1026.19(e)(3)(iv), consistent with the record retention requirements in § 1026.25(c)(1)(i).

37(h) Calculating Cash to Close

The Bureau's Proposal

Section 1026.37(h) requires the disclosure of the calculation of an estimate of cash due from or to the consumer at consummation, under the heading "Calculating Cash to Close," and permits the use of an optional alternative calculating cash to close table for transactions without a seller. The calculating cash to close table is designed to provide the consumer, using a standardized calculation methodology, with an estimate of the cash due from or to the consumer

[80] 78 FR 79730, 79824 (Dec. 31, 2013).

at consummation. The Bureau recognized when it adopted this requirement that the creditor may not know the amount of the deposit, payments to others, and funds that the consumer either will pay or will receive at consummation and required that the disclosures be based on the best information reasonably available.[81] In doing so, the Bureau acknowledged that the actual amount of cash to close at consummation could differ significantly from the amount disclosed on the Loan Estimate, but determined, nonetheless, that consumers would benefit from receiving an estimate of cash due from or to the consumer at consummation on the Loan Estimate. Notably, the amounts disclosed in the calculating cash to close table are not subject to the specific tolerances under § 1026.19(e)(3) or § 1026.22(a).

The Bureau proposed amendments to § 1026.37(h) and its commentary to address many questions the Bureau has received from industry on the proper calculation of the various amounts disclosed on the calculating cash to close table and the variation among creditors in how the calculating cash to close disclosures are determined. The Bureau did not propose any amendments that would require modification of the Loan Estimate itself but did propose amendments that would clarify or amend calculations that impact the amounts disclosed on the calculating cash to close table. The Bureau also proposed similar amendments to § 1026.38(e) and (i), which contain the Closing Disclosure's alternative and standard calculating cash to close tables, respectively.

The Bureau sought comment on the calculating cash to close table for the Loan Estimate and the Closing Disclosure generally. The Bureau requested comments on possible alternative methods to determine the amounts disclosed on the calculating cash to close table, whether the

[81] 78 FR 79730, 79966-67 (Dec. 31, 2013).

proposed clarifications and revisions would result in more consistent calculation of the amounts on the calculating cash to close table, and other ways to simplify the calculating cash to close table while still providing the consumer with an estimate of the amount due from the consumer at consummation, consistent with the requirements of TILA section 128(a)(17) and the Bureau's goal of providing understandable and consistent information to consumers. The Bureau acknowledged that any redesign of the calculating cash to close table, including its components, could require extensive changes to existing processes and software investments by industry and sought comment on the extent of such changes that would be required by the Bureau's proposal, or by any other proposals suggested by commenters for revisions to the calculating cash to close table.

Comments Received

General comments on the calculating cash to close table for the Loan Estimate in § 1026.37(h) and for the Closing Disclosure in § 1026.38(e) and (i) are discussed below. Specific comments on the proposed amendments to § 1026.37(h) and § 1026.38(e) and (i) are discussed in more detail in the section-by-section analyses related to those specific amendments.

A variety of commenters, including trade associations, GSEs, a software vendor, a software vendor group, a mortgage company, a bank, and a financial holding company, acknowledged that the calculating cash to close tables provide important benefits to consumers and that the proposed revisions would improve the ability of creditors to comply with the calculating cash to close requirements and provide to consumers an accurate cash to close amount. Commenters argued that the calculating cash to close tables enable consumers to understand components of their cash to close amount without the need to wade through the detailed line items in the summaries of transactions or the payoffs and payments tables, and

described the calculating cash to close tables as conducting many of the difficult calculations behind-the-scenes so that consumers can review the high-level components of the calculations, which generally mirror how they think about the transaction. Commenters acknowledged the cost of reprogramming, but nonetheless supported the proposals, stating that the revised disclosure requirements would facilitate creditors' interactions with consumers and result in more accurate calculating cash to close disclosures.

One mortgage company, which generally opposed the Bureau's proposals to make changes to the standard calculating cash to close tables, specifically noted that the alternative calculating cash to close tables function better, are less complicated, and present less information than the standard tables. Further, the commenter provided that the alternative calculating cash to close tables do not rely on mathematical formulas that bear no relationship to reality.

A trade association commenter stated that secondary market investors who purchase loans are requiring use of the alternative tables for refinance transactions and asked the Bureau to clarify that the standard disclosures may be used for refinance transactions. The commenter explained that it would be helpful if a single disclosure form could be utilized for all types of transactions.

A number of commenters, including other trade associations, mortgage companies, and a consumer group, stated that the standard calculating cash to close tables are confusing and complicated. Many commenters specifically identified the "Closing Costs Financed (Paid from your Loan Amount)" and "Down Payment/Funds from Borrower" labels and calculations as the main areas of concern, asserting that the mathematical formulas used to calculate these disclosures do not reflect how consumers understand those amounts in the context of a

residential real estate transaction. One commenter also identified the "Funds for Borrower" disclosure as fundamentally flawed for the same reasons.

Commenters that opposed the proposed amendments suggested a variety of solutions, including that the Bureau remove the standard calculating cash to close tables, "fix" the tables completely, or leave the tables alone. Some commenters recommended that the Bureau remove the calculating cash to close tables on the Loan Estimate and Closing Disclosure, while others recommended that the table only be removed from the Closing Disclosure. Commenters that recommended that the calculating cash to close table be removed only from the Closing Disclosure asserted that the summaries of transactions table plays a duplicative role and results in a more accurate cash to close amount, rendering the Closing Disclosure's calculating cash to close table useless and a source of added confusion for consumers.

According to some commenters, "fixing" the calculating cash to close tables completely would involve a complete overhaul of the tables. A consumer group argued that none of the proposed changes and clarifications will make the table more understandable to consumers. The commenter provided examples of its proposed new format, which itemizes what the borrower must pay and what is paid by or for the borrower, and does not include the closing costs financed disclosure. The closing costs financed disclosure would instead be moved to the last page. Another commenter recommended that the calculating cash to close tables be expanded to identify each formula used and the values that are included in each calculation.

Other commenters suggested different solutions to "fix" the calculating cash to close tables. These commenters asserted that "fixing" the calculating cash to close tables completely would involve replacing the current formulas for the closing costs financed, down payment/funds from borrower, and, as requested by one commenter, the funds for borrower calculations, with

instructions that will allow creditors to disclose amounts that consumers will better understand. Creditors stated that they are unable to explain the formulas, as they currently exist, in a manner that is understandable to consumers.

Some of these commenters also suggested revisions to the label for the closing costs financed and the down payment/funds from borrower disclosures to help alleviate consumer confusion. For example, one commenter suggested renaming the closing costs financed disclosure with what it viewed as a more appropriate label, such as "Amount Resulting from § 1026.38(i)(3) Calculation." In addition, some commenters recommended that the Bureau relabel the down payment/funds from borrower disclosure to eliminate consumer confusion. One recommendation was for the Bureau to remove the label "Down Payment" on the Loan Estimate and Closing Disclosure so that the disclosure is simply labeled "Funds from Borrower." Alternatively, commenters suggested the Bureau relabel the disclosure as "Funds from Borrower" for a transaction that does not involve a seller and "Funds from Borrower (including Down Payment)" or "Down Payment & Funds from Borrower" for a transaction involving a seller. The suggested labels for transactions with sellers would convey to the consumer that the amount disclosed includes the down payment, as the term is commonly understood, but may also include other amounts.

Commenters that recommended that the Bureau not amend the calculating cash to close tables contended that the proposed amendments will provide only marginal improvements to the tables without addressing the more significant concerns with the closing costs financed and down payment/funds from borrower calculations. These commenters argued that implementing the proposed amendments will result in significant costs related to programming, operational procedures, testing, training, developing policies, and internal auditing.

The Final Rule

After considering the comments, the Bureau is not in this final rule deviating significantly from the proposed amendments, which address many questions the Bureau has received from industry on the proper calculation of the various amounts disclosed on the calculating cash to close tables and the variation among creditors in how the calculating cash to close disclosures are determined. Removing the calculating cash to close table from the Loan Estimate or Closing Disclosure, as requested by some commenters, would be a significant change from the current disclosure requirements. The Bureau did not propose such a departure, nor did the Bureau receive comments on the effect on consumers of removing the calculating cash to close tables. The Bureau believes, as do a number of commenters, that the calculating cash to close tables provide important benefits to consumers. In addition to promoting the informed use of credit (which is a purpose of TILA), the calculating cash to close tables ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the loan product, consistent with section 1032(a) of the Dodd-Frank Act. The tables conduct many of the difficult calculations behind-the-scenes so that consumers can review the high-level components of the calculation. The calculating cash to close tables contain disclosures required by TILA section 128(a)(17), including the amount of settlement charges included in the loan (closing costs financed disclosure) and the amount of charges the borrower must pay at closing (cash to close amount). The Bureau believes that the amendments, as finalized, will improve the ability of creditors to comply with the calculating cash to close requirements and provide to consumers a more accurate cash to close amount.

Similarly, making the revisions requested by some commenters would also be a significant change from the current disclosure requirements. As discussed above, some commenters requested that the Bureau amend the closing costs financed and down payment/funds from borrower formulas to more closely reflect consumers' understanding of these disclosure items. In response, the Bureau notes that each of the calculating cash to close disclosure components is designed to work in conjunction with the other calculating cash to close disclosures to yield the estimated amount of cash due from or to the borrower at closing for a wide variety of transaction types. Because money is fungible, in order to create standardized disclosures that can be utilized in a wide variety of transaction types, the Bureau had to create formulas that earmarked loan funds for specific disclosures, including the closing costs financed and down payment/funds from borrower disclosures. In addition, the Bureau designed the closing costs financed disclosure, which is a necessary component of the standard calculating cash to close tables, to satisfy the TILA section 128(a)(17) statutory requirement to disclose the amount of settlement charges included in the loan. Removing that disclosure from the standard calculating cash to close tables would result in an inaccurate disclosure of the amount due from the consumer at consummation, which would be inconsistent with another statutory requirement in TILA section 128(a)(17). One commenter even admitted that it tried to develop an alternative closing costs financed formula that would work for all transaction types but was unable to do so.

The Bureau recognizes that creating revised labels for the closing costs financed and down payment/funds from borrower disclosures, as suggested by some commenters, could alleviate confusion associated with the disclosures. Consumers would no longer associate the amount disclosed on the currently labeled "Closing Costs Financed (Paid from your Loan Amount)" line of the calculating cash to close table with the amount of closing costs they

understand to be financed in their transactions, or the amount disclosed on the currently labeled "Down Payment/Funds from Borrower" line of the calculating cash to close table with the amount of the down payment they understand to be making in their transactions. However, as discussed in the proposal, the Bureau's focus in this rulemaking is to provide additional clarity to facilitate compliance on an expedited schedule. The labels on the Loan Estimate and Closing Disclosure forms were developed through consumer testing processes, and it is not feasible, on an expedited schedule, to reengage in consumer testing to validate revised labels. Although consumer testing of disclosures is not necessary in all instances, the Bureau considers that such testing is important in this context. The Bureau also notes that the down payment/funds from borrower disclosure required under § 1026.37(h)(1)(iii) equally emphasizes "Down Payment" and "Funds from Borrower" in its current display of "Down Payment/Funds from Borrower." Its calculation is designed to encompass the down payment and other funds due from the borrower using a formula that can be applied to a variety of transaction types, including transactions with and without sellers.

The Bureau is not amending the calculating cash to close tables to include the formulas used to calculate the individual components, as suggested by one commenter. The tables intentionally conduct the calculations behind-the-scenes so that consumers can review the high-level components of the calculation. Consumers wishing to see the final details of their transaction can review the summaries of transactions table or the payoffs and payments table on the Closing Disclosure, as applicable.

The Bureau is also not completely overhauling the calculating cash to close tables, as suggested by a consumer group. The commenter's proposed new format would itemize what the borrower must pay and what is paid by or for the borrower, and would not include the closing

costs financed disclosure, which would instead be moved to the last page. The examples ranged in length from 11 lines (for a refinance transaction) to 16 lines (for a purchase transaction), and were substantially longer than the current calculating cash to close tables, which are four lines on the alternative calculating cash to close tables, seven lines on the Loan Estimate's standard calculating cash to close table, and nine lines on the Closing Disclosure's standard calculating cash to close table. The Bureau believes the degree of itemization in the calculating cash to close tables proposed by the commenter is unnecessary and frustrates the benefits of the calculating cash to close tables identified by other commenters, including providing consumers with the high-level components of the cash to close calculation and enabling consumers to understand components of their cash to close amount without the need to wade through the detailed line items in the summaries of transactions or the payoffs and payments tables.

As discussed above, a trade association commenter asked the Bureau to clarify that the standard disclosures may be used for refinance transactions. The commenter is correct that, under the Bureau's regulations, the standard calculating cash to close tables may be used for refinance transactions. A refinance transaction may be disclosed using the optional alternative calculating cash to close table under § 1026.37(h)(2), but use of that table is not required. However, if the creditor previously disclosed the optional alternative calculating cash to close table under § 1026.37(h)(2), the alternative calculating cash to close table must also be disclosed under § 1026.38(e). At the same time, secondary market investors may decide, as a business practice, to impose additional requirements, such as requiring the use of the alternative disclosures for refinance transactions.

The Bureau believes that finalizing the proposed amendments, with some revisions as discussed in the applicable section-by-section analyses, is necessary in order to resolve issues

that have arisen during the initial implementation of the TILA-RESPA Rule and on which industry has asked the Bureau for guidance. The Bureau has been, and remains, engaged in extensive efforts to support industry implementation, and finalizing proposed clarifications and amendments related to the calculating cash to close tables is one such effort.

The Bureau is finalizing the proposed amendments and additional revisions pursuant to the Bureau's authority under TILA section 105(a) and Dodd-Frank Act section 1032(a). The Bureau believes that finalizing the proposed amendments and additional revisions will effectuate the purposes of TILA by facilitating the informed use of credit. Providing consumers with information about the cash to close amount and its critical components helps ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand better the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd Frank Act section 1032(a).

37(h)(1) For All Transactions

The Bureau's Proposal

Section 1026.37(h)(1) requires the disclosure of a calculation, yielding an estimate of the cash needed from the consumer at consummation of the transaction, based on seven components. Each of the seven components, disclosed under § 1026.37(h)(1)(i) through (vii), respectively, is determined by a prescribed calculation. The Bureau proposed to add comment 37(h)(1)-2 to clarify that, on the Loan Estimate for simultaneous subordinate financing, the sale price disclosed under § 1026.37(a)(7) would not be used in any of the § 1026.37(h)(1) calculations. The Bureau explained that omitting the sale price from the calculating cash to close table calculations required under § 1026.37(h)(1) for simultaneous subordinate financing transactions

would result in a cash to close amount reflecting the proceeds of the simultaneous subordinate financing, itself included on the first-lien Loan Estimate in the disclosure under § 1026.37(h)(1)(vii).

In the proposal, with respect to the Closing Disclosure, the Bureau would have structured the calculating cash to close table calculations in § 1026.38(i) to use the sale price disclosed under § 1026.38(j)(1)(ii), and further would have provided in proposed comment 38(j)(1)(ii)-1 that for simultaneous subordinate financing transactions, the sale price would not be disclosed under § 1026.38(j)(1)(ii). Thus, these proposed amendments would have meant that for simultaneous subordinate financing, the sale price disclosed under § 1026.38(j)(1)(ii) would not be used in any of the § 1026.38(i) calculations.

Comments Received

A compliance professional supported the proposal to clarify that, on the Loan Estimate for simultaneous subordinate financing, the sale price disclosed under § 1026.37(a)(7) would not be used in any of the § 1026.37(h)(1) calculations. A financial holding company stated that if the sale price is removed from the calculating cash to close table calculations for simultaneous subordinate financing, the calculations do not work on the Loan Estimate or Closing Disclosure. A title insurance company noted that the Bureau did not make a corresponding change to the commentary to § 1026.38(i), so the change appears only to affect the Loan Estimate. A commenter explained that revisions which clarify how simultaneous subordinate financing is disclosed, including treatment of the sale price, require systems changes which will take a full software cycle to implement.

The Final Rule

For the reasons discussed below, the Bureau is finalizing comment 37(h)(1)-2 as proposed with technical and conforming revisions. The Bureau believes that excluding the sale price from the calculating cash to close calculations for simultaneous subordinate financing purchase transactions will result in a more accurate disclosure of the actual subordinate financing transaction and reduce consumer confusion. As discussed above, the Bureau explained in the section-by-section analysis of § 1026.37(h)(1) of the proposal that omitting the sale price from the cash to close calculations required under § 1026.37(h)(1) for simultaneous subordinate financing transactions would result in a cash to close amount reflecting the proceeds of the subordinate financing, itself included on the first-lien Loan Estimate in the disclosure under § 1026.37(h)(1)(vii). The Bureau notes that this statement is no longer accurate with respect to the final rule. As discussed in the section-by-section analysis of § 1026.38(j)(1)(v), the Bureau is making amendments in the final rule to permit creditors to reflect the proceeds of the subordinate financing that will be applied to the first-lien transaction in the summaries of transactions table on the subordinate financing Closing Disclosure. Amounts that will be disclosed under § 1026.38(j)(1)(v) on the Closing Disclosure will be factored into the Loan Estimate in one of two ways. In transactions subject to § 1026.37(h)(1)(iii)(A)(*2*) and (B), a creditor factors amounts that will be disclosed under § 1026.38(j)(1)(v) into the funds for borrower calculation under § 1026.37(h)(1)(v). However, in transactions subject to § 1026.37(h)(1)(iii)(A)(*1*), a creditor factors amounts that will be disclosed under § 1026.38(j)(1)(v) into the adjustments and other credits calculation under §°1026.37(h)(1)(vii).

The Bureau is also amending proposed comment 37(h)(1)-2 to refer to the sale price disclosure in § 1026.37(a)(7)(i) when referring to the sale price, for greater specificity. Section

1026.37(a)(7)(ii) provides for the disclosure of the estimated property value, and the Bureau does not intend to reference the estimated property value disclosure in final comment 37(h)(1)-2.

The Bureau does not agree with an assertion raised by one commenter that the calculating cash to close table calculations will not work if the sale price is omitted from the calculations for the simultaneous subordinate financing Loan Estimate and Closing Disclosure. Unless information specific to the first-lien transaction, including the loan amount, is accounted for in the simultaneous subordinate financing calculating cash to close table calculations, inclusion of the sale price in the subordinate financing cash to close calculations will result in a large cash to close amount owed by the consumer, instead of a cash to close amount specifically for the subordinate financing transaction. The Bureau believes it is less burdensome to subordinate-lien creditors to omit the sale price from the simultaneous subordinate financing cash to close calculations than to import various elements of the first-lien transaction into the simultaneous subordinate financing calculating cash to close table calculations. For greater clarity and ease of implementation, the Bureau is amending §§ 1026.37(h)(1)(iii) and 1026.38(i)(4)(ii) to provide that for simultaneous subordinate financing, the down payment/funds from borrower amount is determined in accordance with §§ 1026.37(h)(1)(v) and 1026.38(i)(6)(iv), respectively.

As discussed above, a title insurance company noted that the Bureau did not propose an amendment to the commentary to § 1026.38(i) similar to the amendment set forth in proposed comment 37(h)(1)-2, which caused the commenter to believe that the guidance regarding sale price and simultaneous subordinate financing only affects the Loan Estimate. The Bureau notes, however, that consistent with the proposal, the Bureau is structuring the calculating cash to close table calculations in § 1026.38(i) to use the sale price disclosed under § 1026.38(j)(1)(ii), and further is providing in final comment 38(j)(1)(ii)-1 that for simultaneous subordinate financing

purchase transactions, the sale price is not disclosed under § 1026.38(j)(1)(ii). These final amendments mean that for simultaneous subordinate financing purchase transactions, because no sale price is disclosed under § 1026.38(j)(1)(ii), no sale price would be used in any of the § 1026.38(i) calculations. As a result, the Bureau does not believe that a provision corresponding to the one in final comment 37(h)(1)-2 is needed in the commentary to § 1026.38(i). Nonetheless, the Bureau is making additional revisions to the commentary to § 1026.38(i) to clarify that no sale price is used in any of the § 1026.38(i) calculations for simultaneous subordinate financing purchase transactions. As discussed in the section-by-section analysis of § 1026.38(i)(3), the Bureau is amending comment 38(i)(3)-1 to explain that for some loans, such as simultaneous subordinate financing purchase transactions, no sale price will be disclosed under § 1026.38(j)(1)(ii) in accordance with final comment 38(j)(1)(ii)-1. In addition, as discussed above and in the section-by-section analysis of § 1026.38(i)(4), the Bureau is revising § 1026.38(i)(4)(ii) and its commentary to make clear that on the simultaneous subordinate financing Closing Disclosure, the down payment/funds from borrower amount is determined in accordance with the formula in § 1026.38(i)(6)(iv).

The Bureau is providing industry sufficient time to implement all of the amendments related to simultaneous subordinate financing. As discussed in part VI below, the rule will be effective 60 days from publication in the *Federal Register*, but there will be an optional compliance period in effect until October 1, 2018.

37(h)(1)(i) Total Closing Costs

Section 1026.37(h)(1)(i) requires a creditor to disclose the amount of total closing costs disclosed under § 1026.37(g)(6) as a positive number, labeled "Total Closing Costs." The Bureau did not propose any amendments to § 1026.37(h)(1)(i), but the Bureau did propose to

address concerns regarding the required disclosure of negative and positive numbers elsewhere, including in § 1026.37(h)(1)(vii) and (2)(iii), and § 1026.38(e)(2)(ii) and (4)(ii). In addition, the Bureau received a comment from a software vendor requesting that the Bureau amend § 1026.37(h)(2)(ii), the alternative calculating cash to close table's companion provision to § 1026.37(h)(1)(i), to account for situations where the amount of total closing costs disclosed under § 1026.37(g)(6) is a negative number, and the Bureau is amending § 1026.37(h)(2)(ii) accordingly. Therefore, the Bureau believes it is also important to amend § 1026.37(h)(1)(i) to account for situations where the amount of total closing costs disclosed under § 1026.37(g)(6) is a negative number. As amended, § 1026.37(h)(1)(i) requires creditors to disclose under § 1026.37(h)(1)(i) the amount disclosed under § 1026.37(g)(6), labeled "Total Closing Costs." While the Bureau notes that it is not common for the total closing costs disclosed under § 1026.37(g)(6) to be a negative number, the Bureau concludes that it is nonetheless necessary to amend § 1026.37(h)(1)(i) to address the limited circumstances in which a negative number is disclosed under § 1026.37(g)(6).

37(h)(1)(ii) Closing Costs Financed

The Bureau's Proposal

Comment 37(h)(1)(ii)-1 explains that the amount of closing costs financed disclosed under § 1026.37(h)(1)(ii) is determined by subtracting the estimated total amount of payments to third parties not otherwise disclosed under § 1026.37(f) and (g) from the loan amount disclosed under § 1026.37(b)(1). If the result of the calculation is a positive number, that amount is disclosed as a negative number under § 1026.37(h)(1)(ii), but only to the extent that it does not exceed the total amount of closing costs disclosed under § 1026.37(g)(6). If the result of the calculation is zero or negative, the amount of $0 is disclosed under § 1026.37(h)(1)(ii). The

Bureau proposed to revise comment 37(h)(1)(ii)-1 and add comment 37(h)(1)(ii)-2 to provide greater clarity regarding the sale price and loan amount in relation to the closing costs financed calculation.

The Bureau proposed to revise comment 37(h)(1)(ii)-1 to clarify that the sale price disclosed under § 1026.37(a)(7) may be included in the closing costs financed calculation as a payment to a third party not otherwise disclosed under § 1026.37(f) and (g). However, as explained in proposed comment 37(h)(1)-2, sale price would not have been used in any calculating cash to close table calculations on the Loan Estimate for a simultaneous subordinate financing purchase transaction. Consistent with proposed revisions to comment 37(h)(1)(ii)-1, the Bureau also proposed to add comment 38(i)(3)-1 to provide similar guidance for the Closing Disclosure regarding the sale price in relation to the closing costs financed calculation.

In addition, the Bureau proposed to remove the word "total" from the phrase "total loan amount" in comment 37(h)(1)(ii)-1 because "total loan amount" is a defined term under § 1026.32(b)(4), and the Bureau intended only to reference the loan amount disclosed under § 1026.37(b)(1). The Bureau also proposed a technical revision in comment 37(h)(1)(ii)-1 to reference the absolute value of the amount disclosed under § 1026.37(h)(1)(ii) when that amount is negative in order for the calculation to work properly.

Proposed comment 37(h)(1)(ii)-2 explained that the loan amount disclosed under § 1026.37(b)(1) is the total amount the consumer will borrow, as reflected by the face amount of the note, consistent with proposed revisions to § 1026.37(b)(1). The comment further explained that financed closing costs, such as mortgage insurance premiums payable at or before consummation, do not reduce the loan amount. The intent of this proposed comment was to clarify that, regardless of how the term "loan amount" is used by creditors or in relation to

programmatic requirements of specific loan programs, for purposes of the Loan Estimate, the amount disclosed as the loan amount under § 1026.37(b)(1), and the basis for the calculating cash to close table calculations, is the total amount the consumer will borrow as reflected by the face amount of the note. This definition of loan amount under § 1026.37(b)(1) would not have affected how other agencies define or use similar terms for purposes of their own programmatic requirements. Consistent with proposed comment 37(h)(1)(ii)-2, the Bureau also proposed to add comment 38(i)(3)-2 to provide similar guidance for the Closing Disclosure regarding the loan amount in relation to the closing costs financed calculation.

Comments Received

A software vendor supported the proposed change to comment 37(h)(1)(ii)-1, while also noting that the problem it addresses was not a significant concern to the industry. A software vendor and software vendor group noted a slight inconsistency between the language describing the closing costs financed calculation for the Loan Estimate in the proposed revisions to comment 37(h)(1)(ii)-1 and the Closing Disclosure in proposed comment 38(i)(3)-1, which could permit creditors to use two different calculations for the closing costs financed disclosures. Specifically, commenters identified the inclusion of the word "may" in reference to the Loan Estimate's closing costs financed formula in the proposed revisions to comment 37(h)(1)(ii)-1, which would give creditors a discretionary option to include or exclude the sale price in the closing costs financed disclosure on the Loan Estimate's calculating cash to close table, whereas on the Closing Disclosure, proposed comment 38(i)(3)-1 would have required that the sale price disclosed under § 1026.38(j)(1)(ii) be included in the closing costs financed calculation.

A software vendor expressed support for the Bureau's proposed comment 37(h)(1)(ii)-2 to clarify that financed mortgage insurance premiums do not reduce the loan amount used in the

calculation. A trade association commenter did not support requiring the loan amount disclosed in § 1026.37(b)(1) to be used in the closing costs financed calculation; instead, the commenter indicated that creditors should be permitted to use the "base loan amount."

The Final Rule

For the reasons discussed below, the Bureau is finalizing the proposed amendments to comments 37(h)(1)(ii)-1 and -2 with revisions. The Bureau's use of the phrase "may include the sale price disclosed under § 1026.37(a)(7), if applicable" in the proposed revisions to comment 37(h)(1)(ii)-1 was intended to address situations in which the standard calculating cash to close table is used for simultaneous subordinate financing, in which no sale price would be included, as described in proposed comment 37(h)(1)-2. However, the Bureau recognizes the need in final comment 37(h)(1)(ii)-1 for greater clarity and alignment with final comment 38(i)(3)-1 and is revising comment 37(h)(1)(ii)-1 accordingly. For the reasons discussed in the section-by-section analysis of § 1026.37(h)(1), the Bureau is also amending comment 37(h)(1)(ii)-1 to refer to the sale price disclosure in § 1026.37(a)(7)(i) when referring to the sale price. As revised, final comment 37(h)(1)(ii)-1 provides, in part, that the estimated total amount of payments to third parties includes the sale price disclosed under § 1026.37(a)(7)(i), if applicable, unless otherwise excluded under comment 37(h)(1)-2.

The Bureau is also amending comment 37(h)(1)(ii)-1 to include additional examples for consistency with existing comment 37(g)(4)-4, which is not being revised as proposed. As discussed in the section-by-section analysis of § 1026.37(g)(4), the Bureau is not finalizing the proposal that would have required construction costs, payoff of existing liens, and payoff of unsecured debt to be disclosed under § 1026.37(g)(4). The closing costs financed disclosure under § 1026.37(h)(1)(ii) excludes payments to third parties disclosed under § 1026.37(f) and (g)

from the calculation. Because amounts for construction costs, payoff of existing liens, and payoff of unsecured debt would be factored into either the funds for borrower calculation under § 1026.37(h)(1)(v) or the adjustments and other credits calculation under § 1026.37(h)(1)(vii), rather than disclosed under § 1026.37(f) or under § 1026.37(g), they will be included in the closing costs financed calculation as payments to third parties not otherwise disclosed under § 1026.37(f) and (g).

The Bureau believes its statement in proposed new comment 37(h)(1)(ii)-2 that the loan amount is the total amount the consumer will borrow as reflected by the face amount of the note is sufficiently clear and is therefore streamlining the comment by removing the example. The Bureau is also making a technical correction, but is not otherwise amending proposed comment 37(h)(1)(ii)-2 as requested by a commenter. The loan amount disclosed under § 1026.37(b)(1) is an integral part of the closing costs financed calculation, and the calculating cash to close table generally. Each of the calculating cash to close disclosures is designed to work in conjunction with the other calculating cash to close disclosures to yield the estimated amount of cash due from or to the consumer at closing for a wide variety of transaction types. The Bureau designed the calculations so that financed closing costs, such as mortgage insurance premiums payable at or before consummation, do not reduce the loan amount. For purposes of the Loan Estimate, the amount disclosed as the loan amount under § 1026.37(b)(1), and the basis for the calculating cash to close table calculations, is the total amount the consumer will borrow as reflected by the face amount of the note. The Bureau emphasizes that this definition of loan amount under § 1026.37(b)(1) does not affect how other agencies may define or use similar terms for purposes of their own programmatic requirements. For example, the “base loan amount” and “total loan amount,” as those terms are used for loans made under programs of the Federal Housing

Administration (FHA), may not be the same as the loan amount required to be disclosed under § 1026.37(b)(1).

37(h)(1)(iii) Down Payment and Other Funds From Borrower

The Bureau's Proposal

Section 1026.37(h)(1)(iii)(A) requires the down payment and funds from borrower amount in a purchase transaction as defined in § 1026.37(a)(9)(i) to be disclosed as a positive number. In these transactions, the amount is calculated as the difference between the purchase price of the property and the principal amount of the credit extended. The calculation does not capture the amount of any existing loans that the consumer is assuming or any loans subject to which the consumer is taking title to the property (assumed or taken subject to) that will be disclosed on the Closing Disclosure under § 1026.38(j)(2)(iv). Comment 37(h)(1)(iii)-1 explains that, in the case of a transaction other than a construction loan, where the loan amount exceeds the purchase price of the property, the amount disclosed must be $0. Section 1026.37(h)(1)(iii)(B) provides that, in all transactions other than purchase transactions as defined in § 1026.37(a)(9)(i), the amount of estimated funds from the consumer is determined in accordance with § 1026.37(h)(1)(v).

The Bureau proposed to revise § 1026.37(h)(1)(iii)(A) to account for the amount expected to be disbursed to the consumer or used at the consumer's discretion at consummation of the transaction in purchase transactions. Proposed § 1026.37(h)(1)(iii)(A)(*1*) would have specified that, in a purchase transaction as defined in § 1026.37(a)(9)(i), the creditor subtracts the sum of the loan amount and any amount for loans assumed or taken subject to that will be disclosed on the Closing Disclosure from the sale price of the property, except when the sum of the loan amount and any amount for loans assumed or taken subject to that will be disclosed on

the Closing Disclosure exceed the sale price of the property. Proposed § 1026.37(h)(1)(iii)(A)(*2*) would have provided that when the sum of the loan amount and any amount for loans assumed or taken subject to that will be disclosed on the Closing Disclosure exceeds the sale price of the property, the creditor calculates the estimated funds from the consumer in accordance with revised § 1026.37(h)(1)(v).

The Bureau also proposed to make conforming amendments to § 1026.37(h)(1)(iii)(B). As proposed, § 1026.37(h)(1)(iii)(B) would have provided that, for all other transactions, the estimated funds from the consumer is also calculated in accordance with the funds for borrower calculation in revised § 1026.37(h)(1)(v). The Bureau proposed to add new comment 37(h)(1)(iii)-2 to explain that the amount disclosed under § 1026.37(h)(1)(iii)(A)(*2*) or (B) is determined in accordance with the funds for borrower calculation in revised § 1026.37(h)(1)(v).

In addition, the Bureau proposed to replace current comment 37(h)(1)(iii)-1 with a new comment. As a result of the proposed revisions to § 1026.37(h)(1)(iii), current comment 37(h)(1)(iii)-1 would not have been accurate or necessary. The Bureau proposed to remove current comment 37(h)(1)(iii)-1 and to replace it with guidance on the calculation set forth in the proposed revisions to § 1026.37(h)(1)(iii). Proposed new comment 37(h)(1)(iii)-1 explained the calculation that must be followed for accurate disclosure under § 1026.37(h)(1)(iii). The proposed comment also provided guidance regarding minimum cash investments. Some loan programs require borrowers to provide minimum cash investments, which, under the regulations or requirements of those loan programs, may be referred to as “down payments.” The proposed comment explained that the minimum cash investments required of consumers and referred to as “down payments” under some loan programs would not necessarily be reflected in the

disclosure, and disclosure of the calculated amount would not affect compliance or non-compliance with such loan programs' requirements.

Comments Received

In response to the Bureau's general solicitation of comment on the calculating cash to close table, many commenters raised concerns with the down payment and funds from borrower disclosure requirements. The Bureau discusses commenters' general concerns in the section-by-section analysis of § 1026.37(h). The comments summarized below are related to the Bureau's specific proposals under § 1026.37(h)(1)(iii) and its commentary.

A bank commenter and a compliance professional supported the Bureau's proposal to account for the amount expected to be disbursed to the consumer or used at the consumer's discretion at consummation of the transaction in purchase transactions. The commenters stated that this change will allow the accurate reflection of proceeds due to the borrower at closing and urged the Bureau to adopt the proposal.

A secondary market participant, a trade association, software vendors, and a software vendor group objected to the Bureau's distinction between the Bureau's down payment disclosure calculation and minimum cash investments required of consumers under some loan programs, which may also be called "down payments" under those loan programs. Two commenters argued that creditors would be setting up a particular definition of down payment for §§ 1026.37 and 1026.38 that is different from the definition of down payment used by consumers, other Federal agencies, and GSEs. The commenters asserted that it is misleading to disclose to the consumer a down payment amount that does not coincide with the consumer's understanding of what the down payment amount should be, and recommended that the Bureau relabel the disclosure as "Funds from Borrower" instead of "Down Payment/Funds from

Borrower." Commenters also suggested variations of dynamic text such as "Funds from Borrower (including Down Payment)" and "Down Payment & Funds from Borrower" for transactions involving a seller. One commenter stated that the distinction drawn by the Bureau in proposed new comment 37(h)(1)(iii)-1 would be extremely confusing to a consumer. The commenter asserted that it will be difficult for first time home buyers to understand that the federally insured home loan for which they are applying requires a certain down payment, but the federally required disclosure does not reflect that down payment amount. The commenter asserted that it would also be difficult to compare a Loan Estimate for a federally insured home loan program with a Loan Estimate for a conventional home loan program.

The Final Rule

For the reasons discussed below, the Bureau is adopting, with revisions, the proposed amendments to § 1026.37(h)(1)(iii) and proposed comments 37(h)(1)(iii)-1 and -2. The Bureau is adopting the amendment to § 1026.37(h)(1)(iii) as proposed with revisions to clarify how § 1026.37(h)(1)(iii) applies to simultaneous subordinate financing purchase transactions and transactions with improvements to be made on the property. The Bureau is also amending § 1026.37(h)(1)(iii)(A)(*1*) and (*2*) to refer to the sale price disclosure in § 1026.37(a)(7)(i), specifically. The Bureau is making similar amendments to § 1026.38(i)(4)(ii)(A). The Bureau is making minor technical revisions to § 1026.37(h)(1)(iii)(B).

As discussed in more detail in the section-by-section analysis of § 1026.37(h)(1), under the proposal, in a simultaneous subordinate financing transaction, the sale price would have been omitted from the calculating cash to close table calculations, including under § 1026.37(h)(1)(iii). As a result, under the proposal, for simultaneous subordinate financing, proposed § 1026.37(h)(1)(iii)(A)(*2*) would have applied because the loan amount disclosed under

§ 1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) would have exceeded the sale price of the property disclosed under § 1026.37(a)(7). At least one commenter on the proposal to omit the sale price from the cash to close calculations of simultaneous subordinate financing transactions suggested that it was not clear that proposed § 1026.37(h)(1)(iii)(A)(*2*) would have applied to simultaneous subordinate financing. Therefore, the Bureau is amending proposed § 1026.37(h)(1)(iii)(A)(*2*) to explicitly provide that the down payment and funds from borrower amount for simultaneous subordinate financing is determined in accordance with § 1026.37(h)(1)(iii)(A)(*2*). The Bureau is making similar amendments to § 1026.38(i)(4)(ii)(A)(*2*).

The Bureau anticipates that there may be similar uncertainty regarding which subparagraph of § 1026.37(h)(1)(iii)(A) applies to purchase transactions that involve improvements to be made on the property. Therefore, the Bureau is also amending proposed § 1026.37(h)(1)(iii)(A)(*2*) to explicitly provide that the down payment and funds from borrower amount for purchase transactions that involve improvements to be made on the property is determined in accordance with § 1026.37(h)(1)(iii)(A)(*2*). The Bureau is making similar amendments to § 1026.38(i)(4)(ii)(A)(*2*).

The Bureau is adopting proposed comment 37(h)(1)(iii)-1 with revisions. As discussed above, commenters raised concerns with the Bureau's distinction between the down payment disclosure calculation and minimum cash investments required of consumers under some loan programs, which may also be called "down payments" under those loan programs. The commenters recommended that the Bureau revise the "Down Payment/Funds from Borrower" label to remove or deemphasize the "Down Payment" aspect of the label. The Bureau is not amending § 1026.37(h)(1)(iii) in response to these comments. The Bureau notes that the

disclosure required under § 1026.37(h)(1)(iii) equally emphasizes "Down Payment" and "Funds from Borrower" with its current label, "Down Payment/Funds from Borrower." Its calculation is designed to encompass the down payment and other funds from the borrower using a formula that can be applied to a variety of transaction types, including transactions with and without sellers. The Bureau is, however, amending proposed new comment 37(h)(1)(iii)-1 to make clear that the disclosure required under § 1026.37(h)(1)(iii)(A)(*1*) represents both the down payment and other funds from the borrower and to explain that the down payment and funds from borrower calculation is independent of any loan program or investor requirements. Because the Bureau is revising § 1026.37(h)(1)(iii)(A)(*1*) and (*2*) to refer to the sale price disclosure in § 1026.37(a)(7)(i), specifically, as discussed above, the Bureau is also making a conforming revision in comment 37(h)(1)(iii)-1.

The Bureau is adopting comment 37(h)(1)(iii)-2 as proposed with several revisions. The Bureau is revising proposed comment 37(h)(1)(iii)-2 for conformity with revisions made to § 1026.37(h)(1)(iii) discussed above and for clarity. The Bureau also is incorporating portions of the regulatory text and commentary from final § 1026.37(h)(1)(v) into comment 37(h)(1)(iii)-2 for additional clarity regarding the disclosure requirements when the funds for borrower formula under § 1026.37(h)(1)(v) is used in accordance with § 1026.37(h)(1)(iii)(A)(*2*) and (B).

37(h)(1)(v) Funds for Borrower

The Bureau's Proposal

Section 1026.37(h)(1)(v) provides that the amount of down payment and funds from the borrower disclosed under § 1026.37(h)(1)(iii)(B) and of funds for the borrower disclosed under § 1026.37(h)(1)(v) are calculated by subtracting the principal amount of the credit extended, excluding any closing costs financed disclosed under § 1026.37(h)(1)(ii), from the total amount

of all existing debt being satisfied in the transaction, except to the extent the satisfaction of such existing debt is disclosed under § 1026.37(g). For purposes of the funds for borrower disclosure in § 1026.37(h)(1)(v) and the down payment/funds from borrower disclosure in § 1026.37(h)(1)(iii)(B), the calculation is made under § 1026.37(h)(1)(v). When the result of the calculation is positive, that amount is disclosed under § 1026.37(h)(1)(iii)(B) as "Down Payment/Funds from Borrower," and $0 is disclosed under § 1026.37(h)(1)(v) as "Funds for Borrower." When the result of the calculation is negative, that amount is disclosed under § 1026.37(h)(1)(v) as "Funds for Borrower," and $0 is disclosed under § 1026.37(h)(1)(iii)(B) as "Down Payment/Funds from Borrower." When the result is $0, $0 is disclosed as "Down Payment/Funds from Borrower" and "Funds for Borrower" under § 1026.37(h)(1)(iii)(B) and (v), respectively. Current comment 37(h)(1)(v)-1 clarifies that the funds for borrower calculation under § 1026.37(h)(1)(v) is used in a non-purchase transaction to determine the amount disclosed under § 1026.37(h)(1)(iii) and labeled "Down Payment/Funds from Borrower," and that, in a purchase transaction, other than a construction loan, the amount disclosed under § 1026.37(h)(1)(v) and labeled "Funds for Borrower," will be $0, in accordance with § 1026.37(h)(1)(v)(A).

The Bureau proposed to revise § 1026.37(h)(1)(v) to account for the amount expected to be disbursed to the consumer or used at the consumer's discretion at consummation in purchase transactions. As discussed in the section-by-section analysis of § 1026.37(h)(1)(iii) above, the Bureau proposed to amend the down payment/funds from borrower calculation under § 1026.37(h)(1)(iii) to specify in proposed § 1026.37(h)(1)(iii)(A)(*2*) that, in purchase transactions, when the sum of the loan amount and any amount for existing loans assumed or taken subject to that will later be disclosed under § 1026.38(j)(2)(iv) exceeds the sale price, the

funds for borrower calculation in § 1026.37(h)(1)(v), as proposed to be revised, will be used for the transaction. The Bureau proposed conforming revisions to § 1026.37(h)(1)(v) to reflect the proposed changes to § 1026.37(h)(1)(iii)(A)(*2*). The Bureau also proposed to revise comment 37(h)(1)(v)-1 to conform with proposed revisions to § 1026.37(h)(1)(iii)(A) and (v). The comment would have provided that, when the down payment is determined in accordance with § 1026.37(h)(1)(iii)(A)(*1*), $0 is disclosed under § 1026.37(h)(1)(v) as funds for borrower.

The Bureau also proposed to add comment 37(h)(1)(v)-2 to provide that the amounts disclosed under § 1026.37(h)(1)(iii)(A)(*2*) or (B), as applicable, and § 1026.37(h)(1)(v), are determined by subtracting the sum of the loan amount disclosed under § 1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed on the Closing Disclosure under § 1026.38(j)(2)(iv) (less any closing costs financed disclosed under § 1026.37(h)(1)(ii)) from the total amount of all existing debt being satisfied in the transaction. Proposed comment 37(h)(1)(v)-2 further would have clarified that the phrase "total amount of all existing debt being satisfied in the transaction" includes amounts that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(ii), (iii), and (v). The Bureau sought comment on whether defining the phrase "total amount of all existing debt being satisfied in the transaction" to mean specifically amounts that will be disclosed under § 1026.38(j)(1)(ii), (iii), and (v) is too prescriptive and how else the Bureau might provide greater clarity around amounts that must be included in this calculation as part of the "total amount of all existing debt being satisfied by the transaction." Consistent with proposed revisions to § 1026.37(h)(1)(v) and comment 37(h)(1)(v)-1, and proposed comment 37(h)(1)(v)-2, the Bureau proposed similar provisions for the Closing Disclosure in § 1026.38(i)(6)(iv) and comment 38(i)(6)(ii)-1, and proposed comment 38(i)(6)(ii)-2.

Comments Received

A bank, a compliance professional, and a settlement agent supported the Bureau's proposed amendments to § 1026.37(h)(1)(v). Two commenters stated that the amendments will allow the accurate reflection of proceeds due to the borrower at closing and urged the Bureau to adopt the proposal. One commenter expressed support for the prescriptive nature of proposed comment 37(h)(1)(v)-2 to clarify that the amounts included as existing debt being satisfied in the transaction are the amounts that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(ii), (iii), and (v), but cautioned that the proposed amendments to the commentary of § 1026.37(g)(4) regarding the payoff of amounts secured by the real property would have unintended consequences because under the proposal, the debt would not be disclosed under those paragraphs. A software vendor noted a slight wording difference between proposed comment 37(h)(1)(v)-2 pertaining to the Loan Estimate and proposed amendments to comment 38(i)(6)(ii)-1 pertaining to the Closing Disclosure. Specifically, proposed comment 37(h)(1)(v)-2 provided that the total amount of all existing debt being satisfied in the transaction includes the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v), as applicable. This commenter interpreted the word "includes" to mean "includes, but is not limited to," whereas the proposed revisions to comment 38(i)(6)(ii)-1 make clear that for the Closing Disclosure, the total amount of all existing debt being satisfied in the transaction is the sum of the amounts disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v), as applicable. The commenter requested that the Bureau revise the comments for better consistency and alignment.

The Final Rule

For the reasons discussed below, the Bureau is adopting, with minor revisions and clarifications, the proposed amendments to § 1026.37(h)(1)(v) and comment 37(h)(1)(v)-1, and proposed comment 37(h)(1)(v)-2. The Bureau is adopting the amendments to § 1026.37(h)(1)(v) and comment 37(h)(1)(v)-1 as proposed with minor revisions to conform to the additional clarifications contained in final comment 37(h)(1)(iii)-1. As discussed in the section-by-section analysis of § 1026.37(h)(1)(iii), the Bureau is amending comment 37(h)(1)(iii)-1 to make clear that the disclosure required under § 1026.37(h)(1)(iii) represents both the down payment and other funds from the borrower. The Bureau is making similar amendments to § 1026.37(h)(1)(v) and comment 37(h)(1)(v)-1.

As discussed above, a commenter noted a slight wording difference between proposed comment 37(h)(1)(v)-2 pertaining to the Loan Estimate and the proposed revisions to comment 38(i)(6)(ii)-1 pertaining to the Closing Disclosure. The Bureau is revising comment 37(h)(1)(v)-2 to replace the word "includes" with the phrase "is the sum of" for consistency and alignment with final comment 38(i)(6)(ii)-1. The Bureau is also making minor technical revisions to comment 37(h)(1)(v)-2.

As discussed above, a commenter cautioned that the proposed amendments to the commentary of § 1026.37(g)(4) regarding the payoff of amounts secured by the real property would have unintended consequences for the proposal to define existing debt being satisfied in the transaction as the amounts that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(ii), (iii), and (v). As discussed in the section-by-section analysis of § 1026.37(g)(4), the Bureau is not finalizing the proposal that would have required construction

costs, payoff of existing liens, and payoff of unsecured debt to be disclosed under § 1026.37(g)(4).

37(h)(1)(vi) Seller Credits

The Bureau's Proposal

Section 1026.37(h)(1)(vi) requires creditors to disclose the amount that the seller will pay for total loan costs as determined by § 1026.37(f)(4) and total other costs as determined by § 1026.37(g)(5), labeled "Seller Credits," under the heading "Calculating Cash to Close." Section 1026.37(f) and (g) requires creditors to disclose loan costs and other transaction costs under the headings "Loan Costs" and "Other Costs," respectively. Current comments 37(h)(1)(vi)-1 and -2 contain guidance on disclosure of seller credits. The Bureau believes that under existing § 1026.37, creditors have the option to disclose specific seller credits either under § 1026.37(f) and (g) or under § 1026.37(h)(1)(vi). Nonetheless, the Bureau has received questions on this issue. Thus, the Bureau proposed to amend comments 37(h)(1)(vi)-1 and -2 to provide that specific seller credits may be disclosed in the calculating cash to close table under § 1026.37(h)(1)(vi) or, at the creditor's option, may be reflected within the amounts disclosed for those specific items in the Loan Costs and Other Costs tables, under § 1026.37(f) and (g), respectively. For the reasons discussed below, the Bureau is finalizing comments 37(h)(1)(vi)-1 and -2 substantially as proposed but with certain minor changes.

Comments Received

The Bureau received comments on these proposed changes from industry individuals, title companies, settlement agents, large banks, consumer groups, a large industry trade group, and non-banks. Generally commenters supported the proposal.

Some industry commenters stated that seller credits should only be disclosed as "lump sum" credits under § 1026.37(h)(1)(vi). Some of these commenters expressed the view that disclosing specific seller credits in the same location on each Loan Estimate creates consistency for consumers in comparing Loan Estimates. They further stated that requiring seller credits to be disclosed in the same location on each Loan Estimate under § 1026.37(h)(1)(vi) would create less confusion for other parties involved in the transaction, including due diligence companies and secondary market investors. Several commenters stated that the "itemization" of seller credits, the disclosure of specific seller credits within § 1026.37(f) and (g), is a significant pain point for the secondary market, as due diligence companies are flagging errors in the disclosure of seller credits, because, often a creditor may not have received a breakdown of any specific credits at the time the creditor provided the disclosure. One industry commenter stated that the disclosure of specific seller credits within § 1026.37(f) and (g) presents a burden on the creditor to adjust the disclosed amounts of affected closing costs, and masks the true amount of these settlement costs to the consumer. This commenter noted that the disclosure of seller credits within § 1026.37(f) and (g) could impact the calculation of good faith tolerance cures by lowering the disclosed costs of an individual service by the amount of the seller credit.

Some industry and consumer group commenters, stated that the Bureau should require creditors to disclose specific seller credits only in the Loan Costs and Other Costs tables under § 1026.37(f) and (g), respectively. They noted that requiring a single standard for disclosure of specific seller credits would allow consumers to more easily compare the Loan Estimate to the Closing Disclosure, as specific seller credits must be listed on the Closing Disclosures in the Loan Costs and Other Costs tables, under § 1026.38(i)(7), in the seller-paid column. The consumer group commenters further stated that consistent placement of seller credits on Loan

Estimates would enhance consumer understanding during the shopping process by creating consistency in the disclosure of these credits.

Many industry commenters stated that the Bureau should retain the optionality for disclosing specific seller credits under § 1026.37(f) and (g), respectively, or under § 1026.37(h)(1)(vi). Some of these commenters noted that the optionality should be maintained because the application of seller credits is governed by contracts between buyers and sellers and government programs, such as the Veterans Affairs home loan program, which may dictate whether specific seller credits must be disclosed under § 1026.37(f) and (g), or under § 1026.37(h)(1)(vi). Commenters noted that requiring specific seller credits to be disclosed under § 1026.37(f) and (g) or § 1026.37(h)(1)(vi) would necessitate mortgage origination systems changes. An industry commenter noted that the Bureau should retain the optionality because the Bureau has not done any consumer testing to support taking away the optionality and that it is not clear that consumers are currently confused by the different approaches. Another industry commenter stated that it believes that mandating the manner in which specific seller credits are disclosed would remove the benefit of clarity the integrated disclosures were intended to provide. Another industry commenter noted that optionality should be retained to facilitate creditors' compliance with the good faith determination under § 1026.19(e)(3) and relevant tolerances.

A number of industry commenters requested additional clarification on disclosing specific seller credits on the Loan Estimate. One industry commenter specifically asked for clarification on situations where the actual cost for that service is less than the estimate. Other industry commenters requested clarification about whether a loan cost that is fully paid by a specific seller credit may be excluded from the Loan Costs and Other Costs tables entirely. A

group of vendor commenters requested clarification on how flexibility in the disclosure of specific seller credits on the Loan Estimate affects the good faith determination under § 1026.19(e)(3) and the relevant tolerance for those costs. Beyond the proposed clarification regarding the Loan Estimate, one industry bank commenter encouraged the Bureau to provide flexibility in displaying seller credits on the Closing Disclosure.

The Final Rule

The Bureau has considered these comments and is finalizing amendments to comment 37(h)(1)(vi)-1 and finalizing amendments to comment 37(h)(1)(vi)-2 substantially as proposed with certain minor changes. The Bureau believes that final comments 37(h)(1)(vi)-1 and -2 are consistent with existing § 1026.37(h)(1)(vi), under which creditors already have the option to disclose seller credits in the calculating cash to close table under § 1026.37(h)(1)(vi) or within the amounts disclosed for specific items in the Loan Costs and Other Costs tables under § 1026.37(f) and (g). In response to commenter requests, the Bureau has added an additional example in comment 37(h)(1)(vi)-2 to provide clarification on circumstances where a seller credit covers the entire cost of a service. Final comment 37(h)(1)(vi)-2 provides the example that, if the creditor knows at the time of the delivery of the Loan Estimate that the seller has agreed to pay half of a $100 required pest inspection fee, the creditor may either disclose the required pest inspection fee as $100 under § 1026.37(f) with a $50 seller credit disclosed under § 1026.37(h)(1)(vi) or disclose the required pest inspection fee as $50 under § 1026.37(f), reflecting the specific seller credit in the amount disclosed for the pest inspection fee. If the creditor knows at the time of the delivery of the Loan Estimate that the seller has agreed to pay the entire $100 pest inspection fee, the creditor may either disclose the required pest inspection fee as $100 under § 1026.37(f) with a $100 seller credit disclosed under § 1026.37(h)(1)(vi) or

disclose nothing under § 1026.37(f), reflecting that the specific seller credit will cover the entire pest inspection fee.

The Bureau declines to implement requests that specific seller credits be disclosed exclusively in the calculating cash to close table under § 1026.37(h)(1)(vi) or exclusively within the specific services in the Loan Costs and Other Costs tables under § 1026.37(f) and (g). Commenters provided arguments in support of both approaches, and many commenters supported preserving the optionality consistent with existing § 1026.37(h)(1)(vi). Since the Bureau believes that comments 37(h)(1)(vi)-1 and -2 are consistent with existing § 1026.37(h)(1)(vi), additional consumer testing is not necessary. In response to commenter requests for clarity on the disclosure of seller credits on the Loan Estimate, the Bureau provides the following discussion.

Generally, seller credits are determined by the terms of the legal obligation between the seller and consumer. Since the creditor is not setting the terms of the legal obligation between a seller and a consumer, the basis for the optionality in disclosure of seller credits is defined in comment 37(h)(1)(vi)-2. Comment 19(e)(1)(i)-1 requires disclosures based on the best information reasonably available at the time the disclosure is provided to the consumer.

Similar to the example provided in final comment 37(h)(1)(vi)-2, if consistent with the terms of the legal obligation between the seller and consumer, creditors may disclose the cost, in full, on the Loan Estimate in the Loan Costs or Other Cost tables, pursuant to § 1026.37(f) and (g), and disclose a seller credit pursuant to § 1026.37(h)(1)(vi), or creditors may just disclose the cost less the seller credit in the Loan Costs or Other Cost tables, pursuant to § 1026.37(f) and (g). For example, assume the terms of the legal obligation between the seller and consumer obligate the seller to provide a credit of $200 to the consumer to go towards the cost of the appraisal. The

creditor may disclose the full cost of the appraisal, $500, on the Loan Estimate, under § 1026.37(f)(2), Services You Cannot Shop For, and include the specific seller credit for $200 under § 1026.37(h)(1)(vi). Alternatively, if consistent with the terms of the legal obligation, the creditor can show $300, *i.e.*, the amount of the appraisal fee less the specific seller credit, on the Loan Estimate, under § 1026.37(f)(2), Services You Cannot Shop For, and not include the specific seller credit pursuant to § 1026.37(h)(1)(vi).

In response to commenter requests for clarification on how disclosing seller credits on the Loan Estimate impacts the good faith determination under § 1026.19(e)(3) and relevant tolerances, the Bureau provides the following example. Assume a seller offers to provide a $500 credit to the consumer to cover the anticipated cost of the appraisal. The creditor discloses an appraisal fee of $500, under § 1026.37(f)(2), Services You Cannot Shop For, on the Loan Estimate and includes a seller credit of $500 under § 1026.37(h)(1)(vi). The actual cost of the appraisal is $750. Assume that a review of the terms of the legal obligation between the creditor and consumer indicates that the consumer has agreed to be charged for any amount above the estimated $500 for the appraisal. Given this set of facts, if the creditor wants to reset the appraisal tolerance for purposes of the good faith determination, the creditor must issue revised disclosures with the corrected appraisal fee of $750, subject to the requirements of § 1026.19(e)(3)(iv) and (e)(4).

Assume the same example above, except that the creditor chooses not to disclose an appraisal fee under § 1026.37(f)(2), Services You Cannot Shop For, on the Loan Estimate because the creditor assumed it would be covered by the $500 seller credit for the appraisal. Under these facts, and because the cost is in the zero tolerance category under § 1026.19(e)(3)(i), if the actual appraisal cost turns out to be $750, the creditor will not be able to reset the appraisal

tolerance for purposes of the good faith determination under § 1026.19(e)(3), unless the creditor can otherwise establish a valid justification under § 1026.19(e)(3)(iv).

The Bureau declines to add further commentary in response to commenters requesting flexibility in disclosing seller credits on the Closing Disclosure, because, unlike the Loan Estimate, the Closing Disclosure has a seller-paid column.

37(h)(1)(vii) Adjustments and Other Credits

The Bureau's Proposal

Section 1026.37(h)(1)(vii) requires that the amount of all loan costs determined under § 1026.37(f) and other costs determined under § 1026.37(g) that are to be paid by persons other than the loan originator, creditor, consumer, or seller, together with any other amounts that are required to be paid by the consumer at consummation pursuant to a purchase and sale contract, be disclosed as a negative number. This assumes that the amount required to be paid by the consumer at consummation pursuant to a purchase and sale contract will be less than the amount of credits, which, the Bureau understands, may not always be the case. Therefore, the Bureau proposed to revise § 1026.37(h)(1)(vii) to eliminate the requirement that the amount disclosed be a negative number. Also, as discussed below, the Bureau proposed to revise comments 37(h)(1)(vii)-1, -5, and -6.

Current comment 37(h)(1)(vii)-1 clarifies that amounts expected to be paid by third parties not involved in the transaction, such as gifts from family members and not otherwise identified under § 1026.37(h)(1), are included in the amount disclosed under § 1026.37(h)(1)(vii), but the comment does not specify whether amounts received by the consumer prior to consummation must be included in the calculation. The Bureau proposed to revise comment 37(h)(1)(vii)-1 to distinguish between amounts paid by third parties at

consummation and amounts given to consumers in advance of consummation. As proposed, the revision to comment 37(h)(1)(vii)-1 would have provided that amounts expected to be paid at consummation by third parties not involved in the transaction, such as gifts from family members and not otherwise identified under § 1026.37(h)(1), would be included in the amount disclosed under § 1026.37(h)(1)(vii), although amounts expected to be provided to consumers in advance of consummation by third parties not otherwise involved in the transaction, including gifts from family members, would not be required to be included in the amount disclosed under § 1026.37(h)(1)(vii).

Current comment 37(h)(1)(vii)-5 clarifies that funds that are provided to the consumer from the proceeds of subordinate financing, local or State housing assistance grants, or other similar sources are included in the amount disclosed under § 1026.37(h)(1)(vii), but the comment does not specify whether this requirement pertains to the first- or subordinate-lien transaction. The Bureau proposed to revise comment 37(h)(1)(vii)-5 to clarify that funds that are provided to the consumer from the proceeds of subordinate financing, local or State housing assistance grants, or other similar sources are included in the amount disclosed under § 1026.37(h)(1)(vii) on the first-lien Loan Estimate. In the proposal, the Bureau explained that the funds that are provided to the consumer from the proceeds of subordinate financing and that will be applied to the first-lien transaction would not be included in the adjustments and other credits calculation on the simultaneous subordinate financing Loan Estimate. The Bureau sought comment on whether there are circumstances in which local or State housing assistance grants are applied to subordinate financing and not to the first lien.

Current comment 37(h)(1)(vii)-6 clarifies that adjustments that require additional funds from the consumer pursuant to the real estate purchase and sale contract, such as for additional

personal property that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v), may be included in the amount disclosed under § 1026.37(h)(1)(vii) and would reduce the total amount disclosed. However, such amounts may have already been factored into calculations for prior components of the calculating cash to close table, thereby being counted twice. The Bureau proposed to revise comment 37(h)(1)(vii)-6 to clarify that amounts that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v) may be included in the adjustments and other credits amount disclosed on the Loan Estimate under § 1026.37(h)(1)(vii), provided they are not also included in the calculation for revised § 1026.37(h)(1)(iii) or (v) as debt being satisfied in the transaction. Otherwise, such amounts would be factored into the cash to close calculations twice.

Comments Received

Industry commenters, including a trade association, a mortgage company, a compliance professional, and a financial holding company generally expressed support for the proposed amendments to § 1026.37(h)(1)(vii) and its commentary. One commenter specifically expressed support for the proposal to amend § 1026.37(h)(1)(vii) to remove the requirement that the adjustments and other credits amount be disclosed as a negative number, and another stated that eliminating the requirement to disclose amounts as positive or negative numbers throughout will go a long way in providing creditors with greater flexibility to complete the calculating cash to close table in a manner that can be explained to consumers and reflects the actual anticipated amount of cash needed to close. A credit union commenter stated generally that there is confusion surrounding the use of negative values on the form, but did not provide specific concerns. Two commenters expressed support for the clarification in comment 37(h)(1)(vii)-1

that amounts expected to be paid to consumers in advance of consummation are not required to be disclosed under § 1026.37(h)(1)(vii), although one commenter was concerned with the proposed clarification, noting that at the time of disclosure, it is typically not evident whether the borrower will receive gift funds before or at consummation. Two commenters supported the proposed amendments to comment 37(h)(1)(vii)-5 to clarify that funds that are provided to the consumer from the proceeds of subordinate financing, local or State housing assistance grants, or other similar sources are included in the amount disclosed under § 1026.37(h)(1)(vii) on the first-lien Loan Estimate. Finally, one commenter supported the proposed revisions to comment 37(h)(1)(vii)-6 to clarify that amounts that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v) may be included in the adjustments and other credits amount disclosed on the Loan Estimate under § 1026.37(h)(1)(vii) only if they are not also included in the calculation for § 1026.37(h)(1)(iii) or (v) as existing debt being satisfied in the transaction.

A trade association commenter stated that in the absence of guidance on how to disclose certain amounts, such as loans assumed or taken subject to and the sale price of personal property, some creditors have been including these amounts in the adjustments and other credits disclosures under §§ 1026.37(h)(1)(vii) and 1026.38(i)(8) on the Loan Estimate and Closing Disclosure, respectively. The commenter stated that updating software systems to accommodate such proposals would require substantial reprogramming, which has both time and cost implications.

The Final Rule

For the reasons discussed below, the Bureau is finalizing proposed amendments to § 1026.37(h)(1)(vii) and comment 37(h)(1)(vii)-1 with revisions. The Bureau is amending

comment 37(h)(1)(vii)-4 to conform to final comment 37(h)(1)(vi)-1. The Bureau is finalizing amendments to comment 37(h)(1)(vii)-5 as proposed and is finalizing amendments to comment 37(h)(1)(vii)-6 with revisions.

The Bureau is adopting the proposed amendments to § 1026.37(h)(1)(vii) that allow the adjustments and other credits amount to be disclosed as a positive number. The Bureau is further revising § 1026.37(h)(1)(vii) for consistency with comment 37(g)(4)-4, for which the proposed amendments are not being adopted. As discussed in the section-by-section analysis of § 1026.37(g)(4), the Bureau is not finalizing the proposal that would have required construction costs, payoff of existing liens, and payoff of unsecured debt to be disclosed under § 1026.37(g)(4). For transactions disclosed using the calculations under § 1026.37(h)(1)(iii)(A)(*2*) and (B) and § 1026.37(h)(1)(v), which include certain purchase transactions (e.g., "cash back" purchase transactions, simultaneous subordinate financing purchase transactions, and purchase transactions that involve improvements to be made on the property) and non-purchase transactions (e.g., refinance transactions and construction-only transactions), any construction costs and payoffs of secured and unsecured debt will be factored into the down payment/funds from borrower and funds for borrower calculations in § 1026.37(h)(1)(iii)(A)(*2*) and (B) and § 1026.37(h)(1)(v). For purchase transactions disclosed using the down payment/funds from borrower calculation under § 1026.37(h)(1)(iii)(A)(*1*), however, payoffs of secured and unsecured debt will not be factored into the § 1026.37(h)(1)(iii)(A)(*1*) calculation, which only factors in the sale price, loan amount, and loans assumed or taken subject to. These purchase transactions do not use the § 1026.37(h)(1)(iii)(A)(*2*) and (B) and § 1026.37(h)(1)(v) calculations where such payoffs would be factored in. Therefore, for purchase transactions disclosed using the calculation under

§ 1026.37(h)(1)(iii)(A)(*1*), payoffs of secured and unsecured debt will be factored into the adjustments and other credits disclosure under § 1026.37(h)(1)(vii). To enable these payoffs to be factored into the adjustments and other credits disclosure under § 1026.37(h)(1)(vii) for transactions disclosed under § 1026.37(h)(1)(iii)(A)(*1*), the Bureau is also revising § 1026.37(h)(1)(vii) for this subset of transactions to remove the condition that amounts that are required to be paid by the consumer at closing and disclosed in the adjustments and other credits row of the calculating cash to close table must be amounts pursuant to a purchase and sale contract. For additional clarity, § 1026.37(h)(1)(vii) is also revised to specify that other amounts that are required to be paid by the consumer at closing in a transaction disclosed under § 1026.37(h)(1)(iii)(A)(*1*) or pursuant to a purchase and sale contract do not include amounts that are disclosed under § 1026.37(f) and (g). Final comment 37(h)(1)(vii)-6, discussed in more detail below, explains that amounts included in the calculation for § 1026.37(h)(1)(iii)(A)(*2*) or (B) or § 1026.37(h)(1)(v) as existing debt being satisfied in the transaction are not also included in the adjustments and other credits calculation under § 1026.37(h)(1)(vii).

Final comment 37(h)(1)(vii)-1 clarifies that amounts expected to be paid at consummation by third parties not otherwise associated with the transaction, such as gifts from family members and not otherwise identified under § 1026.37(h)(1), are included in the amount disclosed under § 1026.37(h)(1)(vii), although amounts expected to be provided in advance of consummation by third parties, including family members, not otherwise associated with the transaction are not required to be disclosed under § 1026.37(h)(1)(vii). The Bureau does not believe that additional clarification is needed with respect to a creditor not knowing at the time disclosures are provided whether a consumer will receive gift funds before or at consummation. The Bureau notes that current comment 19(e)(1)(i)-1 provides that if any information necessary

for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer, consistent with § 1026.17(c)(2)(i).

The Bureau is removing the word "verbally" in comment 37(h)(1)(vii)-4. In comment 37(h)(1)(vi)-1, the Bureau proposed and finalized the removal of the word "verbally" in the phrase "verbally from the consumer" that was provided as an example of a way in which the creditor may obtain information regarding the amount of seller credits that will be paid in the transaction, finding the word to be unnecessary. For consistency, the Bureau is removing from comment 37(h)(1)(vii)-4 the word "verbally" in the example of ways in which the creditor may obtain information regarding items to be disclosed under § 1026.37(h)(1)(vii).

As discussed above, the Bureau is finalizing the amendments to comment 37(h)(1)(vii)-6 as proposed with revisions for clarity and conformity with final § 1026.37(h)(1)(vii). Final comment 37(h)(1)(vii)-6 provides that adjustments that require additional funds from the consumer in a transaction disclosed using the formula under § 1026.37(h)(1)(iii)(A)(*1*) or pursuant to the real estate purchase and sale contract, such as for additional personal property that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v), are only included in the amount disclosed under § 1026.37(h)(1)(vii) if such amounts are not included in the calculation under § 1026.37(h)(1)(iii)(A)(*2*) or (B) or § 1026.37(h)(1)(v) as debt being satisfied in the transaction. The comment provides additional examples of such adjustments, including payoffs of secured or unsecured debt in a purchase transaction disclosed using the formula under § 1026.37(h)(1)(iii)(A)(*1*) or prorations for property taxes and homeowner's association dues.

The Bureau understands that creditors have been disclosing loans assumed or taken subject to that will be disclosed on the Closing Disclosure under § 1026.38(j)(2)(iv) differently absent definitive commentary from the Bureau. The amendments discussed in the section-by-section analyses of § 1026.37(h)(1)(iii) and (v), and § 1026.38(i)(4) and (6), which include loans assumed or taken subject to that will be disclosed on the Closing Disclosure under § 1026.38(j)(2)(iv) in those calculating cash to close calculations, are intended to address the variation among creditors in how this amount is disclosed. As to the commenter's assertion that the disclosure requirements for the sale price of personal property were unclear, current comment 37(g)(4)-4 provides the sale price of personal property as an example of an amount that would be disclosed under § 1026.37(g)(4). The Bureau recognizes that the industry has taken varying approaches to disclosing the amount of loans assumed or taken subject to that will be disclosed on the Closing Disclosure under § 1026.38(j)(2)(iv) absent definitive commentary from the Bureau and is providing sufficient time for reprogramming. As discussed in part VI below, the rule will be effective 60 days from publication in the *Federal Register*, but there will be an optional compliance period in effect until October 1, 2018.

37(h)(2) Optional Alternative Calculating Cash to Close Table for Transactions Without a Seller or for Simultaneous Subordinate Financing

Section 1026.37(h)(2) only permits the use of the optional alternative calculating cash to close table in transactions without a seller. The Bureau has provided informal guidance that, in purchase transactions with simultaneous subordinate financing, the optional alternative calculating cash to close table may be used for the simultaneous subordinate financing Loan Estimate if the first-lien Closing Disclosure will record the entirety of the seller's transaction and the seller did not contribute to the subordinate financing. The Bureau proposed to amend

§ 1026.37(h)(2) and comment 37(h)(2)-1 to permit creditors to use the optional alternative calculating cash to close table for the disclosure of simultaneous subordinate financing purchase transactions if the first-lien Closing Disclosure will record the entirety of the seller's transaction. The Bureau specifically sought comment on whether it is appropriate to limit use of the optional alternative calculating cash to close table for disclosure of simultaneous subordinate financing purchase transactions to situations in which the first-lien Closing Disclosure will record the entirety of the seller's transaction.

Commenters include a title insurance company, software vendors, a bank, and a state housing finance agency. Most commenters supported the Bureau's proposal to allow the use of the optional alternative calculating cash to close table if the first-lien Closing Disclosure will record the entirety of the seller's transaction. As discussed more fully in the section-by-section analysis of § 1026.37(d)(2), one commenter questioned what disclosures should be used when the optional alternative tables were initially used for the simultaneous subordinate financing, but a seller later agrees to contribute to the costs of the subordinate financing, making continued use of the alternative tables impermissible under the proposal. Another commenter noted that the proposal could lead to variation among creditors and a commenter stated that the UCD may not allow the use of the alternative tables for any transactions with sellers.

For the reasons discussed below, the Bureau is finalizing the proposed amendments to § 1026.37(h)(2) and comment 37(h)(2)-1 with minor technical revisions. As discussed in the section-by-section analysis of § 1026.37(d)(2), the Bureau appreciates the commenter's question regarding how to proceed under the proposal when the alternative table was properly used on the Loan Estimate, or even the Closing Disclosure, but a subsequent event causes the continued use of the alternative table to be impermissible. The Bureau is directly addressing this concern by

adding new comment 38(k)(2)(vii)-1, amending comments 38(d)(2)-1 and 38(j)-3, and amending proposed new comments 38(t)(5)(vii)(B)-1 and -2 as discussed in the section-by-section analysis of § 1026.37(d)(2).

The Bureau recognizes that allowing the use of the optional alternative tables for simultaneous subordinate financing purchase transactions may cause variability in disclosure among creditors but concludes that consumers will not be harmed by such optionality. In addition, the Bureau understands that investor requirements may be more restrictive than the optionality provided by the Bureau. However, the Bureau believes flexibility is beneficial to some creditors, and the Bureau will continue to provide the option for creditors to use the alternative tables for simultaneous subordinate financing transactions with sellers.

37(h)(2)(ii) Total Closing Costs.

Section 1026.37(h)(2)(ii) requires a creditor to disclose the amount of total closing costs disclosed under § 1026.37(g)(6) as a negative number, labeled "Total Closing Costs." The Bureau did not propose any amendments to § 1026.37(h)(2)(ii), but the Bureau did propose to address concerns regarding the required disclosure of negative and positive numbers elsewhere, including in §§ 1026.37(h)(1)(vii) and (2)(iii), and 1026.38(e)(2)(ii) and (4)(ii). In addition, the Bureau received a comment from a software vendor requesting that the Bureau amend § 1026.37(h)(2)(ii) to account for situations where the amount of total closing costs disclosed under § 1026.37(g)(6) is a negative number. While the Bureau notes that it is not common for the total closing costs disclosed under § 1026.37(g)(6) to be a negative number, the Bureau agrees with the commenter that an amendment is necessary to address the limited circumstances in which a negative number is disclosed under § 1026.37(g)(6) as total closing costs. Therefore, the Bureau is amending § 1026.37(h)(2)(ii) to provide that, under § 1026.37(h)(2)(ii), the

creditor discloses the amount disclosed under § 1026.37(g)(6) as a negative number if the amount disclosed under § 1026.37(g)(6) is a positive number and as a positive number if the amount disclosed under § 1026.37(g)(6) is a negative number, labeled "Total Closing Costs."

37(h)(2)(iii) Payoffs and Payments

The Bureau's Proposal

Section 1026.37(h)(2)(iii) requires the disclosure of the total of all payments to third parties not otherwise disclosed under § 1026.37(f) and (g) as a negative number. The requirement to disclose a negative number, however, does not account for the limited circumstances in which funds provided by third parties and the proceeds of subordinate financing exceed the total amount of payoffs and payments to third parties. Comment 37(h)(2)(iii)-1 provides examples of payoffs and payments, including payoff of existing liens secured by the property identified under § 1026.37(a)(6). The Bureau proposed to revise § 1026.37(h)(2)(iii) to remove the requirement to disclose as a negative number the total of all payments to third parties not otherwise disclosed under § 1026.37(f) or (g). The Bureau also proposed to revise comment 37(h)(2)(iii)-1 for conformity with proposed revisions to comment 37(g)(4)-4, which would have permitted disclosure of certain payoffs under § 1026.37(g)(4) instead of requiring them to be included in the payoffs and payments disclosure under § 1026.37(h)(2)(iii). The proposed revisions to comment 37(h)(2)(iii)-1 would have also added construction costs as an example of an amount included in the payoffs and payments disclosure under § 1026.37(h)(2)(iii) and explained that credits could be included in the payoffs and payments disclosure. Finally, the Bureau proposed to add comment 37(h)(2)(iii)-2 to clarify that on a first-lien Loan Estimate that uses the optional alternative tables, the proceeds of simultaneous subordinate financing, if any, would be included, as a positive number, in the total amount disclosed under § 1026.37(h)(2)(iii).

The Bureau explained that the funds from the subordinate financing that will be applied to the first-lien transaction would not have been included in the estimated total payoffs and payments amount on the simultaneous subordinate financing Loan Estimate.

Comments Received

A trade association commenter commended the Bureau for permitting credits to be included in the payoffs and payments disclosure under revised § 1026.37(h)(2)(iii) and comment 37(h)(2)(iii)-1, but requested that the Bureau allow industry sufficient time to reprogram the forms accordingly. Another trade association commenter stated that eliminating the requirement to disclose amounts as positive or negative numbers throughout will go a long way in providing creditors with greater flexibility to complete the calculating cash to close table in a manner that can be explained to consumers and reflects the actual anticipated amount of cash needed to close. A credit union stated generally that there is confusion surrounding the use of negative values on the forms, but did not provide specific concerns. In response to the proposed revisions to comment 37(h)(2)(iii)-1, a title insurance company requested that the Bureau only permit creditors to disclose construction costs and the payoff of existing liens secured by the property in the payoffs and payments table under § 1026.37(h)(2)(iii), instead of providing creditors with the option of disclosing these costs under § 1026.37(g)(4), as proposed. A law firm expressed concern with the inclusion of construction costs for construction purpose loans in the example of permissible payoffs and payments, noting that the example seemed to be limited to transactions where the loan purpose is construction in accordance with § 1026.37(a)(9)(iii) and would not cover a refinance transaction that has a construction loan component. The commenter requested that the Bureau clarify that the example regarding construction costs in comment 37(h)(2)(iii)-1

will apply to any transaction with a construction loan component in which the creditor is otherwise permitted to use the alternative calculating cash to close table.

Commenters supported the Bureau's proposed comment 37(h)(2)(iii)-2 which would have clarified that the proceeds of simultaneous subordinate financing would be required to be included, as a positive number, in the total amount disclosed under § 1026.37(h)(2)(iii) on the first-lien Loan Estimate that is disclosed using the alternative tables. The commenters stated that the revisions will improve the ability of creditors to comply with the calculating cash to close table requirements and provide an accurate cash to close amount to consumers, and stated that the table provides important benefits to consumers. As discussed in the section-by-section analysis of § 1026.37(d)(2), commenters asserted that most creditors prefer that the Loan Estimate for the simultaneous subordinate financing include a disclosure of the amount of proceeds that will be applied to the first-lien loan, and asked the Bureau to permit this practice and clarify the provision under which the disclosure should be made.

The Final Rule

For the reasons discussed below, the Bureau is adopting the amendments to § 1026.37(h)(2)(iii) as proposed, adopting the proposed amendments to comment 37(h)(2)(iii)-1 in part and with revisions, adopting proposed comment 37(h)(2)(iii)-2 with clarifying revisions and renumbering it as comment 37(h)(2)(iii)-2.i, and adding a new comment 37(h)(2)(iii)-2.ii. The Bureau appreciates commenters' support of the proposal to permit disclosure of a positive number under § 1026.37(h)(2)(iii). This amendment to eliminate the requirement that the total payoffs and payments amount be disclosed as a negative number permits the inclusion of credits and proceeds from simultaneous subordinate financing in the payoffs and payments table. Creditors are required to disclose under final § 1026.37(h)(2)(iii) the total amount of payoffs and

payments to be made to third parties not otherwise disclosed under § 1026.37(f) and (g), labeled "Total Payoffs and Payments."

The Bureau is adopting the proposed amendments to comment 37(h)(2)(iii)-1 in part with revisions to the construction lending example. As discussed in the section-by-section analysis of § 1026.37(g)(4), the Bureau is not finalizing the proposal that would have required certain costs and payoffs to be disclosed under § 1026.37(g)(4) unless included in the payoffs and payments disclosure under § 1026.37(h)(2)(iii). Therefore, the Bureau is not finalizing the proposed conforming revision in comment 37(h)(2)(iii)-1, which would have permitted creditors to disclose these amounts under § 1026.37(g)(4) instead of requiring creditors to include them in the § 1026.37(h)(2)(iii) payoffs and payments disclosure. The Bureau is revising the construction lending example in the proposed revisions to comment 37(h)(2)(iii)-1 as requested by a commenter. While the examples of amounts incorporated into the total payoffs and payments disclosed under § 1026.37(h)(2)(iii) are intended to be informative, they are not intended to cover the entire range of possibilities. Nonetheless, the Bureau is taking the opportunity to broaden the example regarding construction loans in the proposed revisions to comment 37(h)(2)(iii)-1 to all loans with a construction component in which the creditor is otherwise permitted to use the optional alternative calculating cash to close table, regardless of whether the loans have a construction purpose under § 1026.37(a)(9)(iii). Final comment 37(h)(2)(iii)-1 explains that examples of the amounts incorporated in the total amount disclosed under § 1026.37(h)(2)(iii) include, but are not limited to: payoffs of existing liens secured by the property identified under § 1026.37(a)(6) such as existing mortgages, deeds of trust, judgments that have attached to the real property, mechanics' and materialmen's liens, and local, State and Federal tax liens; payments of unsecured outstanding debts of the consumer; construction costs

associated with the transaction that the consumer will be obligated to pay in any transaction in which the creditor is otherwise permitted to use the alternative calculating cash to close table; and payments to other third parties for outstanding debts of the consumer (but not for settlement services) as required to be paid as a condition for the extension of credit.

The Bureau is renumbering proposed comment 37(h)(2)(iii)-2 as comment 37(h)(2)(iii)-2.i and revising the comment for greater clarity. Proposed comment 37(h)(2)(iii)-2 explained that on the Loan Estimate for a first-lien transaction disclosed under § 1026.37(h)(2) that also has simultaneous subordinate financing, the proceeds of the subordinate financing are included in the payoffs and payment disclosure. In final comment 37(h)(2)(iii)-2.i, the Bureau adds the heading "First-lien Loan Estimate," provides a refinance transaction as an example of a first-lien transaction that could be disclosed under § 1026.37(h)(2) and that also has simultaneous subordinate financing, and makes technical revisions for greater clarity.

The Bureau is adding comment 37(h)(2)(iii)-2.ii to permit creditors to include, in the payoffs and payments disclosure on the simultaneous subordinate financing Loan Estimate, the proceeds of the subordinate financing that will be applied to the first-lien transaction. Final comment 37(h)(2)(iii)-2.ii responds to commenters' questions about how to disclose the simultaneous subordinate financing proceeds that will be applied to the first lien on the simultaneous subordinate financing Loan Estimate. The commenters asserted that most creditors prefer that the simultaneous subordinate financing Loan Estimate include a disclosure of the amount of loan proceeds that will be applied to the first-lien loan, and asked the Bureau to permit this common practice. In the proposal, the Bureau noted that the funds that are provided to the consumer from the proceeds of simultaneous subordinate financing and that will be applied to the first-lien transaction would not be included in the total payoffs and payments amount on the

simultaneous subordinate financing Loan Estimate. As a result, the cash to close amount disclosed under § 1026.37(h)(2)(iv) would have represented the loan proceeds as "cash out" to the borrower. The Bureau understands from the comments that a common industry practice may be to include the loan proceeds from the simultaneous subordinate financing as a payoff on the Loan Estimate and Closing Disclosure for the simultaneous subordinate financing transaction, which is inconsistent with the Bureau's proposal.

The Bureau believes that consumers may benefit from allowing creditors to continue this apparently common practice. This practice may help consumers better understand the simultaneous subordinate financing transaction and its relation to the first-lien loan. It provides a way for the simultaneous subordinate financing Loan Estimate to include a disclosure of the amount of proceeds that will be applied to the first-lien loan. Because, under this practice, the cash to close amount disclosed under § 1026.37(h)(2)(iv) would not include the loan proceeds, the cash to close amount may better represent to consumers the cash, if any, they will owe or receive from the subordinate-lien loan that will not be applied directly to the first-lien loan. The Bureau is making similar amendments in commentary to § 1026.38(j)(1)(v) and (t)(5)(vii)(B).

As discussed in part VI below, the Bureau is providing sufficient time for industry to reprogram the forms to permit credits to be disclosed. The rule will be effective 60 days from publication in the *Federal Register*, but there will be an optional compliance period in effect until October 1, 2018.

37(k) Contact Information

The Bureau proposed a technical, non-substantive, amendment to comment 37(k)-3 to replace the current reference to § 1026.38(k)(2) with a reference to § 1026.37(k)(2) to correct a typographical error. Commenters did not provide any statements concerning this typographical

correction, other than to request that the correction of typographical errors be effective as quickly as possible and be applied retroactively.

The Bureau is adopting the revision to comment 37(k)-3 as proposed. Although this revision is not retroactive, the Bureau considers the current reference to § 1026.38(k)(2) to be a scrivener's error that should be interpreted as a reference to § 1026.37(k)(2).

37(l) Comparisons

37(l)(1) In Five Years

37(l)(1)(i)

The Bureau proposed to make a technical, non-substantive amendment, to comment 37(l)(1)(i)-1 to correct a typographical error. The Bureau proposed to replace the word "fractional" with "functional" in comment 37(l)(1)(i)-1 to conform to the language of comment 37(c)(1)(i)(C)-1. The Bureau received no comments on the proposed change and is adopting as proposed the modification to the comment.

37(l)(3) Total Interest Percentage

The Bureau's Proposal

Section 1026.37(l)(3) requires creditors to disclose the total interest percentage (TIP) and provides that the TIP is the total amount of interest that the consumer will pay over the life of the loan, expressed as a percentage of the principal of the loan. The Bureau explained in the TILA–RESPA Final Rule that prepaid interest is included in the TIP calculation.[82] The Bureau proposed to amend comment 37(l)(3)-1 to clarify further that prepaid interest is included when calculating the TIP.

[82] 78 FR 79730, 79982 (Dec. 31, 2013).

Comments Received

Several industry commenters supported the clarifications in the proposed comment. Two industry commenters requested that the Bureau delete disclosure of the TIP from the disclosures required under §§ 1026.37 and 1026.38.

Several industry commenters requested additional clarifications related to the TIP. Several industry commenters requested that the Bureau modify the proposed comment to clarify whether the prepaid interest included in the TIP should only include the borrower-paid prepaid interest, or whether all prepaid interest should be included, regardless of which party is paying. Two industry commenters requested clarification on the impact of a negative prepaid interest amount on the calculation, namely whether the negative balance should be used or whether a $0 value should be assigned to the prepaid interest component of the calculation. One industry commenter indicated that the Bureau should clarify that the TIP is considered accurate if the finance charge is considered accurate because the TIP is comprised solely of a finance charge (consumer-paid interest).

One industry commenter indicated that there appears to be a discrepancy between the TILA statute and Regulation Z as to when the amount of prepaid interest disclosed under § 1026.37 is accurate. The commenter indicated that that discrepancy can impact the accuracy of the TIP. This commenter requested additional clarification on this issue.

The Final Rule

The Bureau is adopting comment 37(l)(3)-1 as proposed with several revisions. As proposed, the Bureau is adopting final comment 37(l)(3)-1 to provide that prepaid interest is included when calculating the TIP. In response to comments received, the Bureau also is amending comment 37(l)(3)-1 to clarify that it is the prepaid interest that the consumer will pay

which is included when calculating the TIP. This clarification is consistent with § 1026.37(l)(3), which defines the TIP as the total amount of interest that the consumer will pay over the life of the loan, expressed as a percentage of the amount of credit extended. In addition, in response to comments received, the Bureau also is revising comment 37(l)(3)-1 to clarify that prepaid interest that is disclosed as a negative number under §§ 1026.37(g)(2) or 1026.38(g)(2) must be included as a negative value when calculating the TIP.

As discussed above, one industry commenter indicated that the Bureau should clarify that the TIP is considered accurate if the finance charge is considered accurate because the TIP is comprised solely of a finance charge (consumer-paid interest). The Bureau is not addressing this issue in the final rule. The Bureau notes that total interest is a component of the finance charge but is not the same as the finance charge.

As discussed above, one industry commenter indicated that there appears to be a discrepancy between the TILA statute and Regulation Z as to when the amount of prepaid interest disclosed under § 1026.37 is accurate. The commenter notes TILA section 121(c), which provides that in the case of any consumer credit transaction a portion of the interest on which is determined on a per-diem basis and is to be collected upon the consummation of such transaction, any disclosure with respect to such portion of interest shall be deemed to be accurate for purposes of TILA if the disclosure is based on information actually known to the creditor at the time that the disclosure documents are being prepared for the consummation of the transaction. This TILA section is implemented in § 1026.17(c)(2)(ii). The commenter also notes that § 1026.19(e)(3)(iii) provides that the prepaid interest disclosure must be consistent with the best information reasonably available to the creditor at the time it is disclosed. Thus, § 1026.17(c)(2)(ii) provides that the prepaid interest disclosure is accurate if it is based on

information known to the creditor at the time the disclosure is "prepared," while § 1026.19(e)(3)(iii) provides that the prepaid interest disclosure is accurate if it is based on the best information reasonably available to the creditor at the time it is "disclosed." The commenter indicated that that discrepancy can impact the accuracy of the TIP and asked for additional clarity on this issue.

The Bureau does not believe that additional clarification is needed. In the TILA-RESPA Final Rule, the Bureau made clear that the standard for accuracy for prepaid interest disclosures set forth in TILA section 121(c), as implemented by § 1026.17(c)(2)(ii), does not apply to transactions subject to § 1026.19(e) and (f). Specifically, comment 17(c)(2)(ii)-1 provides that for purposes of transactions subject to § 1026.19(e) and (f), the creditor shall disclose the actual amount of per-diem interest that will be collected at consummation, subject only to the disclosure rules in § 1026.19(e) and (f). The Bureau notes that for disclosures of per-diem interest in the Loan Estimate, § 1026.19(e)(3)(iii) provides that the prepaid interest disclosure must be consistent with the best information reasonably available to the creditor at the time it is disclosed. For disclosure of per-diem interest in the Closing Disclosure provided at or before consummation, comment 19(f)(1)(i)-2 provides that creditors may estimate disclosures provided under § 1026.19(f)(1)(ii)(A) and (f)(2)(ii) using the best information reasonably available when the actual term is unknown to the creditor at the time disclosures are made, consistent with § 1026.17(c)(2)(i). See the section-by-section analysis of § 1026.19(f)(2)(iii) for a discussion of the disclosure of per-diem interest in post-consummation disclosures required under § 1026.19(f)(2)(iii).

37(o) Form of Disclosures

37(o)(4) Rounding

The Bureau's Proposal

Section 1026.37(o)(4)(i)(A) requires the disclosure of rounded amounts for the amounts disclosed pursuant to § 1026.37(b)(6) and (7), (c)(1)(iii), (c)(2)(ii) and (iii), (c)(4)(ii), (f), (g), (h), (i), and (l), except that the per-diem amount required to be disclosed by § 1026.37(g)(2)(iii) and the monthly amounts required to be disclosed by § 1026.37(g)(3)(i) through (iii) and (g)(3)(v) shall not be rounded. Section 1026.37(o)(4)(ii) requires the percentage amounts disclosed pursuant to § 1026.37(b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), and (l)(3) to be disclosed up to two or three decimal places and the percentage amount disclosed pursuant to § 1026.37(l)(2) to be disclosed up to three decimal places. The Bureau, through informal guidance, received many inquiries regarding rounding requirements. Based on these inquiries the Bureau understands that there is confusion and uncertainty regarding the rounding requirements under to § 1026.37(o)(4). In response, the Bureau proposed revisions to § 1026.37(o)(4)(i)(A) and (ii) and to comments 37(o)(4)(i)(A)-1 and 37(o)(4)(ii)-1 to simplify the rounding and disclosure requirements under § 1026.37(o)(4).

The proposed revisions to § 1026.37(o)(4)(i)(A) would have provided that the disclosure of the per-diem amount under § 1026.37(g)(2)(iii) and the monthly amounts under § 1026.37(g)(3)(i) through (iii) and (g)(3)(v) are rounded to the nearest cent and disclosed to two decimal places. The proposed revision to comment 37(o)(4)(i)(A)-1 would have added clarifying language and an illustrative example of the disclosure of per-diem interest.

Proposed revisions to § 1026.37(o)(4)(ii) would have simplified the rounding requirements for amounts described in § 1026.37(o)(4)(ii). Proposed § 1026.37(o)(4)(ii)

provides that the percentage amounts required to be disclosed under § 1026.37(b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), (l)(2), and (l)(3) must be disclosed by rounding the exact amounts to three decimal places and then dropping any trailing zeros to the right of the decimal point. Proposed comment 37(o)(4)(ii)-1 illustrates the requirements of proposed § 1026.37(o)(4)(ii) with examples.

Comments Received

A mortgage company commenter and a software vendor commenter agreed with the proposed revisions that would simplify rounding requirements. A trade association commenter stated that the Bureau should not revise § 1026.37(o)(4)(i)(A). This commenter believes that § 1026.37(o)(4)(i)(A) and related commentary clearly provide that the per diem and monthly amounts are not rounded, but the creditor must disclose the amounts to two decimal places and truncate partial cents. This commenter indicated that its software is programmed to disclose these amounts to two decimal places, because it believes partial cents are not disclosed.

A bank holding company commenter stated that rounding on the Loan Estimate in contrast to providing exact amounts on the Closing Disclosure is confusing to the consumer. The commenter suggested that the Bureau require the disclosure of exact unrounded amounts on the Loan Estimate and the Closing Disclosure. A mortgage company commenter supported the proposed revision, but asked that the Bureau reconsider the requirement to round certain amounts under § 1026.37(f), (g), and (h). The commenter noted that the disclosures under these sections are subject to the good faith tolerance provisions under § 1026.19(e)(3) and that creditors are required to keep a separate record of the unrounded amounts for the estimates disclosed pursuant to § 1026.37(f), (g), and (h). The commenter further stated that providing unrounded numbers

for these sections would help consumers, auditors and investors easily determine cost increases and reduce paperwork.

Two software vendors believed that the proposed revisions to § 1026.37(o)(4)(i) would require the use of rounded numbers when calculating certain aggregated amounts. One of these commenters provided an example showing the range between calculations for per-diem interest using rounded amounts and unrounded amounts.

A commenter representing a bank stated that the proposed revisions to § 1026.37(o)(4)(ii) and comment 37(o)(4)(ii)-1 would impose significant burden. This commenter asserted that many in the industry would have to invest significant resources into reprogramming their systems for a change that would not benefit the consumer. The commenter asserts that disclosing "8%" instead of "8.00%" would not increase the consumers understanding of the disclosure, but it would require significant effort from the creditor to reprogram its systems.

The Final Rule

The Bureau is adopting the proposed amendments to § 1026.37(o)(4)(i)(A) and (ii) and to comments 37(o)(4)(i)(A)-1 and 37(o)(4)(ii)-1 with several revisions to § 1026.37(o)(4)(i)(A) and comment 37(o)(4)(i)(A)-1 to clarify the requirements under these provisions. Section 1026.37(o)(4)(i)(A) is being revised to include the word "dollar amounts" instead of "amounts" and to require that the per-diem and monthly dollar amounts not be rounded. Comment 37(o)(4)(i)(A)-1, as proposed, is being revised to explain that partial cents are not disclosed for dollar amounts and that partial cents shall be rounded or truncated to the nearest whole cent.

Although one commenter asserted that § 1026.37(o)(4)(i)(A) clearly provides that the per-diem and monthly amounts are disclosed to two decimal places, the Bureau notes that it received several inquiries from industry, namely software vendors, expressing uncertainty

regarding whether it is permissible to disclose partial cents for certain dollar amounts under § 1026.37(o)(4)(i)(A). As discussed above, the Bureau is adding the option to round or truncate partial cents which would not affect the commenter's current method for disclosing certain dollar amounts pursuant to § 1026.37(o)(4)(i)(A).

As discussed above, two commenters asserted that the proposed revisions to § 1026.37(o)(4)(i) would require the use of rounded numbers when calculating certain aggregate amounts. The Bureau notes that these final revisions discussed above would not change the method for calculating the total dollar amounts that are required to be rounded under § 1026.37(o)(4)(i). The amendments in this final rule do not change what is provided under comment 37(o)(4)-2, which explains that if a dollar amount that is required to be rounded by § 1026.37(o)(4)(i) on the Loan Estimate is a total of one or more dollar amounts that are not required or permitted to be rounded, the total amount must be rounded consistent with § 1026.37(o)(4)(i), but such component amounts used in the calculation must use such unrounded numbers. As discussed above, a commenter asserted that the proposed revision to § 1026.37(o)(4)(ii) and comment 37(o)(4)(ii)-1 would be burdensome because it would require the reprogramming and testing of systems and that requiring the disclosure of "8%" instead of "8.00%" would be a change that would not provide any benefit to consumers. Section 1026.37(o)(4)(ii) and comment 37(o)(4)(ii)-1 currently provide that whole numbers are truncated at the decimal point, and this particular provision should, therefore, not require reprogramming. In addition, as noted above, the Bureau believes too many numbers on the Loan Estimate may lead to information overload for the consumer. Dropping trailing zeros reduces information overload and thereby increases a consumer's comprehension of the disclosures.

As explained above, two commenters stated that rounding should not be permitted on the Loan Estimate for various reasons. As the Bureau explained in the TILA-RESPA Final Rule, consumer testing showed that it was easier for consumers to quickly identify and evaluate the rounded amounts as opposed to unrounded amounts described under § 1026.37(b)(6) and (7), (c)(1)(iii), (c)(2)(ii) and (iii), (c)(4)(ii), (f), (g), (h), (i), and (l).[83] Based on consumer testing, the Bureau determined that providing a large number of exact amounts for every disclosure could lead to information overload and thereby reduce the effectiveness of the disclosures.[84] The Bureau continues to believe that rounding certain amounts described under § 1026.37(o)(4) is more beneficial than the disclosure of exact amounts.[85]

Section 1026.38 Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure)

The Bureau's Proposal

Section 1026.38 sets forth the content of the Closing Disclosure required by § 1026.19(f) to be provided to the consumer. Comments 38-1 to 38-3 are applicable generally to § 1026.38. The Bureau proposed to add comment 38-4, which would have provided options for the disclosure of reductions in principal balance (principal curtailments) to satisfy the refund requirements of § 1026.19(f)(2)(v), when contractual or other legal obligations of the creditor, such as the requirements of a government loan program or the purchase criteria of an investor, prevent the creditor from refunding cash to the consumer. The proposal would have provided creditors the option to disclose principal curtailments in the other costs table under § 1026.38(g)(4), in the summaries of transactions table under § 1026.38(j)(4)(i), in the payoffs

[83] *See* 78 FR 79730, 79995 (Dec. 31, 2013).
[84] *See id*.
[85] *See id*.

and payments table under § 1026.38(t)(5)(vii)(B), or on an additional page (addendum) under § 1026.38(t)(5)(ix). The principal curtailment disclosure would have contained a statement that the principal curtailment amount includes a refund for an amount that exceeds the limitations on increases in closing costs under § 1026.19(e)(3) and the amount of such refund. The Bureau sought comment on whether there would be sufficient space in the corresponding rows on the Closing Disclosure for such a statement and whether the Bureau should prescribe a specific statement or permit creditors discretion in developing such statement. For the reasons discussed below, the Bureau is revising and broadening proposed comment 38-4 to address principal reductions (curtailments) that are and are not paid for from closing funds, to clarify that the disclosure of a principal reduction is permissible regardless of whether contractual or other legal obligations of the creditor prevent the creditor from refunding cash to the consumer, and to limit where principal reductions may be disclosed on the Closing Disclosure.

Comments Received

The Bureau received comments on this proposal from a variety of commenters, including a law firm, a mortgage company, a title insurance company, a software vendor, a software vendor group, a bank, a financial holding company, a housing finance agency, GSEs, and other industry commenters. Commenters generally appreciated that the Bureau proposed to provide guidance on the disclosure of principal curtailments, but provided significant feedback and sought clarification on many aspects of the proposal.

An industry group recommended that the Bureau use the phrase "principal reduction" instead of "principal curtailment," noting that consumers would be more familiar with the recommended phrase. The Bureau appreciates the suggestion to use the phrase "principal reduction" instead of "principal curtailment," and is revising the commentary accordingly. As

explained in final comment 38-4, when referring to principal reductions on the Closing Disclosure, creditors are permitted to use other similar phrases.

Many industry commenters requested that the Bureau permit the use of principal curtailments for situations other than when a creditor is providing a credit for a tolerance refund or to meet loan program or investor requirements. An industry commenter and a law firm commenter expressed concern that proposed comment 38-4 could be interpreted to limit the use of principal curtailments to only those circumstances where contractual or other legal obligations of the creditor prevent the creditor from refunding cash to the consumer. Commenters stated that consumers benefit more from a principal curtailment than from a refund in the form of cash because it reduces the principal balance of the loan on which a consumer is charged interest, and pointed to the TILA-RESPA Final Rule in which the Bureau explicitly declined to prescribe how refunds are made to consumers.[86]

In the proposal, the Bureau sought to address the particular issue of how to disclose a principal reduction that is used to provide a tolerance refund, but did not intend to propose to limit the use of principal reductions to situations where a creditor is providing a tolerance refund under § 1026.19(f)(2)(v). As noted above, the Bureau is revising and restructuring comment 38-4 to provide greater clarity regarding the disclosure of principal reductions, including the disclosure of principal reductions that are not used to provide tolerance refunds. Final comment 38-4 does not contain the language identified by commenters as potentially restricting the use of principal reductions to only those circumstances where contractual or other legal obligations of the creditor prevent the creditor from refunding cash to the consumer.

[86] Commenters appear to be referencing the TILA-RESPA Final Rule at 78 FR 79730, 79883 (Dec. 31, 2013).

Many commenters, including an industry group, mortgage company, title insurance company, and software vendor, noted a discrepancy between the commentary, which stated that the principal curtailment would be disclosed as a negative number, and the preamble, which stated that the principal curtailment would be marked as "Paid Outside of Closing" or "P.O.C." The commenters asked the Bureau to clarify the disclosure requirements. Because whether a principal reduction is disclosed as a negative or positive number and with or without the label "Paid Outside of Closing" or "P.O.C." is dependent upon the purpose of the principal reduction, the Bureau is revising comment 38-4 and restructuring the comment according to the purpose for which the principal reduction is used. Final comment 38-4.i covers situations in which a principal reduction is not paid for with closing funds, whereas final comment 38-4.ii covers situations in which a principal reduction is paid for with closing funds. In addition, the Bureau is not prescribing whether the principal reduction is disclosed as a negative number or as a positive number. The Bureau is taking a similar approach in other sections of this final rule to provide for flexibility as to the disclosure of negative and positive numbers because the Bureau recognizes that mandating a negative number or mandating a positive number for a particular disclosure may not be suitable for all transaction types. See, for example, the section-by-section analyses of § 1026.37(h)(1)(i), (1)(vii), and (2)(iii), and § 1026.38(e)(2)(ii) and (4)(ii).

The proposal would have provided that a principal curtailment may be disclosed under § 1026.38(j)(4)(i), which provides requirements for the disclosure of costs that are not paid from closing funds. A software vendor, industry group, and title insurance company requested additional clarity regarding the disclosure of a principal curtailment pursuant to § 1026.38(j)(4)(i). Specifically, the commenters asked where in the summaries of transactions table to disclose the principal curtailment, since § 1026.38(j)(4)(i) contains the requirement to

disclose costs that are not paid from closing funds but would otherwise be disclosed pursuant to § 1026.38(j) marked with the phrase "Paid Outside of Closing" or "P.O.C.," but does not itself provide a specific location for the principal curtailment disclosure. The commenters suggested that the appropriate location within the summaries of transactions table is under § 1026.38(j)(1)(v), as an amount due from the consumer. For principal reductions disclosed in the summaries of transactions table, the Bureau intended the disclosure to be made under § 1026.38(j)(1)(v) and is revising comment 38-4 to, among other things, specifically reference § 1026.38(j)(1)(v) instead of § 1026.38(j)(4)(i). The Bureau will continue to reference § 1026.38(j)(4)(i) only for the requirement to mark costs that are not paid from closing funds but would otherwise be disclosed pursuant to § 1026.38(j) with the phrase "Paid Outside of Closing" or "P.O.C."

A title insurance company, a bank, a financial holding company, a software vendor, and GSEs raised concerns with the various options for disclosing a principal curtailment proposed by the Bureau. One commenter supported the flexibility that the Bureau proposed to provide for the disclosure of principal curtailments under § 1026.38(g)(4), (j)(4)(i), (t)(5)(vii)(B) and (t)(5)(ix), but cautioned that some lending programs may not permit the disclosure of principal curtailments on an addendum pursuant to § 1026.38(t)(5)(ix). Some commenters asserted that a principal curtailment should not be disclosed as a closing cost under § 1026.38(g)(4) because closing costs should only include fees and charges that the consumer must pay to obtain and close the loan. Commenters also stated that disclosing a principal curtailment as a closing cost would limit the ability of consumers to compare the closing costs on the Loan Estimate to the closing costs on the Closing Disclosure and would cause consumer confusion. Commenters asserted that systems are not programmed to provide under § 1026.38(g)(4) the label "Paid

Outside of Closing" or "P.O.C.," or lengthy text statements. Another commenter requested that the Bureau limit the disclosure of principal curtailments to § 1026.38(g)(4) or (t)(5)(vii)(B), unless there is insufficient space, at which time disclosure under § 1026.38(t)(5)(ix) would be permissible. One commenter requested that the Bureau limit disclosure of principal curtailments to § 1026.38(j)(4)(i) or an addendum pursuant to § 1026.38(t)(5)(ix), while another commenter asked the Bureau to limit the disclosure of principal curtailments to § 1026.38(j)(1)(v) on the standard disclosure and to § 1026.38(t)(5)(vii)(B) on the alternative disclosure. Finally, one commenter requested that the Bureau prescribe only one location for the disclosure of principal curtailments on the standard and alternative disclosures. Commenters who requested that the Bureau limit the disclosure options stated that a uniform disclosure method for principal curtailments would reduce compliance burden for the industry, aid consumer understanding of the transaction, and aid the utilization of a uniform data standard for the industry.

While the Bureau intended for the proposal to provide the flexibility for the disclosure of principal reductions discussed in the Bureau staff's informal April 2016 webinar, the Bureau appreciates commenters' assertions that a uniform disclosure method for principal reductions would reduce compliance burden, aid consumer understanding, and aid the utilization of a uniform data standard. The Bureau is therefore revising proposed comment 38-4 to limit the disclosure of principal reductions to § 1026.38(j)(1)(v) on the standard Closing Disclosure and § 1026.38(t)(5)(vii)(B) on the alternative Closing Disclosure. The Bureau notes, however, that creditors are permitted to disclose principal reductions under any currently permissible provision prior to the mandatory compliance date of this provision, October 1, 2018, as discussed in part VI, below. For an informal summary of the permissible disclosure options that are currently in

effect and will remain in effect until the mandatory compliance date of this rule, please consult the Bureau staff's April 2016 webinar.

Many commenters responded to the Bureau's request for comment on whether there is sufficient space in the corresponding rows on the Closing Disclosure for creditors to provide a statement explaining that the principal curtailment includes a tolerance refund for exceeding the limitations on increases in closing costs and whether the Bureau should prescribe a specific statement or permit creditors discretion in developing such statement. A title insurance company, housing finance agency, and financial holding company requested that the Bureau prescribe a specific statement for uniformity, and two of the commenters suggested statements that they asserted would have fit in all proposed disclosure locations. Other commenters requested that the Bureau permit creditors discretion in developing the statement but provide an example of a permissible statement or a model statement that would be deemed to be in compliance with the disclosure requirements. A creditor opposed the requirement to make a statement that the amount imposed exceeds the limitations on increases in closing costs, identifying concerns with space limitations. The creditor requested that if the requirement to disclose such a statement is finalized, the Bureau allow creditors discretion in developing the statement. One commenter stated that there is a moderate amount of space for such a statement under § 1026.38(g)(4), limited space under § 1026.38(j)(1)(v), and sufficient space under § 1026.38(t)(5)(vii)(B) and (ix). The same commenter also requested that the Bureau permit the disclosure of the principal curtailment to refer the consumer to an addendum, which would provide the required statement concerning the tolerance refund for exceeding the limitations on increases in closing costs.

While some commenters requested that the Bureau prescribe specific disclosure language, others appreciated the flexibility provided in the proposal to develop their own disclosure language. The commenters also were not consistent as to whether there is sufficient space in the corresponding rows on the Closing Disclosure for the required disclosure, particularly when the disclosure must convey that the principal reduction is being provided to offset charges that exceed the legal limits. Because of potential space constraints anticipated by the Bureau and raised by some commenters, the Bureau is permitting creditors to develop their own disclosure language that contains the required elements using any language that meets the clear and conspicuous standard under § 1026.38(t)(1)(i). The revised commentary contains examples of disclosure statements that would meet the requirements of comment 38-4.

A financial holding company stated that under Texas law, the principal curtailment disclosure requirements could trigger cash-out stipulations which would force creditors to provide principal reductions instead of providing cash refunds to borrowers. Absent additional information, the Bureau is unable to respond to this comment. However, the Bureau notes that creditors have always had the option of using a principal reduction to provide a tolerance refund or for other purposes. Comment 38-4 is being added merely to provide clarity on how to disclose a principal reduction.

A software vendor group explained that implementing proposed comment 38-4 will require significant reprogramming and software changes that will take up to nine months to complete. As discussed in part VI, below, the final rule will be effective 60 days from publication in the *Federal Register*, but compliance will be optional until October 1, 2018, giving industry sufficient time to reprogram systems.

The Final Rule

For the reasons discussed above, the Bureau is revising and broadening proposed comment 38-4 to address principal reductions that are and are not paid for from closing funds, to clarify that the disclosure of a principal reduction is permissible regardless of whether contractual or other legal obligations of the creditor prevent the creditor from refunding cash to the consumer, and to limit where principal reductions may be disclosed on the Closing Disclosure. The introductory paragraph to final comment 38-4 provides only for the disclosure of a principal reduction on the standard disclosure under § 1026.38(j)(1)(v) or on the alternative disclosure under § 1026.38(t)(5)(vii)(B) and contains a list of the elements that must be provided in the principal reduction disclosure. Final comment 38-4.i covers situations in which a principal reduction is not paid from closing funds. Final comment 38-4.ii covers situations in which a principal reduction is paid from closing funds.

Final comment 38-4 provides that the disclosure of a principal reduction must include the following elements: (1) the amount of the principal reduction; (2) the phrase "principal reduction" or a similar phrase; (3) for a principal reduction disclosure under § 1026.38(t)(5)(vii)(B) only, the name of the payee; (4) if applicable to the transaction, the phrase "Paid Outside of Closing" or "P.O.C." and the name of the party making the payment; and (5) if the principal reduction is used to satisfy the requirements of § 1026.19(f)(2)(v), a statement that the principal reduction is being provided to offset charges that exceed the legal limits.

Final comment 38-4 also provides that if there is insufficient space under § 1026.38(j)(1)(v) or (t)(5)(vii)(B) for the creditor to disclose certain elements of the principal reduction disclosure, the creditor may omit these elements from the § 1026.38(j)(1)(v) or

(t)(5)(vii)(B) disclosure and provide a complete disclosure, including these elements, under an appropriate heading on an addendum, in accordance with § 1026.38(j) and (t)(5)(ix), as applicable, with a reference to the abbreviated principal reduction disclosure under § 1026.38(j)(1)(v) or (t)(5)(vii)(B). In this case, the elements that must be included in the abbreviated principal reduction disclosure under § 1026.38(j)(1)(v) or (t)(5)(vii)(B) are the amount of the principal reduction, the phrase "principal reduction" or a similar phrase, the phrase "Paid Outside of Closing" or "P.O.C." if applicable, and for the abbreviated principal reduction disclosure under § 1026.38(t)(5)(vii)(B) only, the name of the payee. The elements that may be omitted from the abbreviated principal reduction disclosure under § 1026.38(j)(1)(v) or (t)(5)(vii)(B) and included in the complete principal reduction disclosure on an addendum are, if applicable to the transaction, the name of the party making the payment and a statement that the principal reduction is being provided to offset charges that exceed the legal limits. The revised commentary contains examples of principal reduction disclosures that would meet the requirements of comment 38-4.

38(a) General Information

38(a)(3) Closing Information

38(a)(3)(iii) Disbursement Date

Section 1026.38(a)(3)(iii) requires disclosure of the disbursement date. In a purchase transaction under § 1026.37(a)(9)(i), the disbursement date is the date the amounts disclosed under § 1026.38(j)(3)(iii) (cash to close from or to borrower) and § 1026.38(k)(3)(iii) (cash from or to seller) are expected to be paid to the consumer and seller. In a non-purchase transaction, the disbursement date is the date the amounts disclosed under § 1026.38(j)(2)(iii) (loan amount) or § 1026.38(t)(5)(vii)(B) (payoffs and payments) are expected to be paid to the consumer or a

third party. The Bureau proposed to revise § 1026.38(a)(3)(iii) to provide that the disbursement date in non-purchase transactions is the date some or all of the loan amount disclosed under § 1026.38(b) is expected to be paid to the consumer or a third party, and to add comment 38(a)(3)(iii)-1 to clarify that the disbursement date for simultaneous subordinate financing is the date some or all of the loan amount disclosed under § 1026.38(b) is expected to be paid to the consumer or a third party. For the reasons discussed below, the Bureau is adopting the amendments to § 1026.38(a)(3)(iii) and new comment 38(a)(3)(iii)-1 substantially as proposed, but is revising § 1026.38(a)(3)(iii) to accommodate purchase transactions where funds are disbursed to the borrower and seller on different dates, and revising § 1026.38(a)(3)(iii) and comment 38(a)(3)(iii)-1 to provide additional clarity regarding disbursement to third parties in certain transactions.

Commenters stated that the proposed amendments would provide needed clarity, but some requested additional revisions. A trade association, software vendor, and title insurance company requested that the Bureau clarify that the disbursement date in purchase transactions is the date funds are expected to be paid to either the consumer or the seller, because in some states disbursement to the consumer and seller may occur on different dates. A title insurance company and trade association requested that the Bureau clarify that in non-purchase transactions and for simultaneous subordinate financing transactions, the disbursement date is the date funds are disbursed from the settlement agent to the consumer or third party, and not the date funds are disbursed from the creditor to the settlement agent. Commenters were concerned that settlement agents are considered to be third parties. A software vendor noted that in construction transactions, the initial disbursement date may not be known at closing and asked

the Bureau to provide additional clarity regarding how to disclose the disbursement date in these transactions.

After considering the comments, the Bureau is adopting the amendments to § 1026.38(a)(3)(iii) and new comment 38(a)(3)(iii)-1 as proposed with revisions. The Bureau recognizes that in some states, funds may be disbursed to the borrower and seller on different dates. The Bureau is revising § 1026.38(a)(3)(iii) to provide that in a purchase transaction where funds are disbursed to the borrower and seller on different dates, it is acceptable to disclose either date under § 1026.38(a)(3)(iii). The Bureau is also adding a cross-reference to comment 38(a)(3)(iii)-1 which contains a different standard for simultaneous subordinate financing transactions. Further, as it pertains to non-purchase transactions and simultaneous subordinate financing, the Bureau intended in the proposal for the disbursement date to reflect the date that some or all of the loan amount is paid to the consumer or a third party, but not the date some or all of the loan amount is paid to the settlement agent. Because a settlement agent is actually a third party to the credit transaction, the Bureau is revising § 1026.38(a)(3)(iii) and comment 38(a)(3)(iii)-1 to clarify that in a non-purchase or a simultaneous subordinate financing transaction, the disbursement date disclosure reflects the date funds are expected to be paid to the consumer or a third party other than a settlement agent.

The Bureau declines to add commentary to explain how to disclose the disbursement date in construction transactions where the date of the initial disbursement is unknown to the creditor. Under final § 1026.38(a)(3)(iii), the disbursement date in a transaction with a construction purpose under § 1026.37(a)(9)(iii) is the date that some or all of the loan amount is paid to the consumer or a third party other than the settlement agent. Depending on the facts and circumstances of the transaction, the disbursement date may be, for example, the date closing

costs are paid with loan proceeds or the date of the first scheduled draw. If these dates are not known at the time the creditor provides the Closing Disclosure, the Bureau concludes that comment 19(f)(1)(i)-2 provides sufficient guidance to creditors regarding the disclosure of unknown information. Comment 19(f)(1)(i)-2 provides that creditors may estimate disclosures using the best information reasonably available when the actual term is unknown to the creditor at the time disclosures are provided, consistent with § 1026.17(c)(2)(i).

38(a)(3)(vii) Sale Price

In a transaction where there is no seller, § 1026.38(a)(3)(vii)(B) requires the creditor to disclose the appraised value of the property. Comment 38(a)(3)(vii)-1 explains that, to comply with this requirement, the creditor discloses the value determined by the appraisal or valuation used to determine loan approval or, if none has been obtained, the estimated value of the property. In the latter case, the creditor may use the estimate provided by the consumer at application, or, if it has performed its own estimate of the property value by the time the disclosure is provided to the consumer, it may disclose that estimate. The Bureau proposed to revise comment 38(a)(3)(vii)-1 to clarify that, if the creditor has performed its own estimate of the property value for purposes of approving the credit transaction by the time the disclosure is provided to the consumer, the creditor must disclose the estimate it used for purposes of approving the credit transaction.

One industry commenter requested that with respect to a transaction involving construction where there is no seller, the Bureau clarify that the creditor must disclose under § 1026.37(a)(7)(ii) the value of the underlying lot at the time of issuing the Loan Estimate, irrespective of what the projected value of the property may be after construction is finished, because the value of the land would be the value of the property at the time the Loan Estimate is

given. This commenter also asked the Bureau to clarify the disclosure requirement on the Closing Disclosure under § 1026.38(a)(3)(vii) for the appraised value for a transaction involving construction where there is no seller. The commenter asked for clarification on whether the creditor must disclose only the value of the underlying lot, or instead must disclose the projected value of the completed project after construction is finished that was used to determine approval of the credit transaction.

The Bureau is adopting proposed comment 38(a)(3)(vii)-1 with revisions. As discussed in more detail below, the Bureau is adopting the proposed change to final comment 38(a)(3)(vii)-1. Also, in response to the comment discussed above, the Bureau is revising comment 38(a)(3)(vii)-1 to provide an example of how the guidance in comment 38(a)(3)(vii)-1 applies to transactions involving construction where there is no seller.

Current comment 38(a)(3)(vii)-1 provides that in transactions where there is no seller, such as in a refinancing, § 1026.38(a)(3)(vii)(B) requires the creditor to disclose the appraised value of the property. To comply with this requirement, the creditor discloses the value determined by the appraisal or valuation used to determine approval of the credit transaction. If the creditor has not obtained an appraisal, the creditor may disclose the estimated value of the property. Where an estimate is disclosed, rather than an appraisal, the label for the disclosure is changed to "Estimated Prop. Value." The creditor may use the estimate provided by the consumer at application, or if it has performed its own estimate of the property value by the time the disclosure is provided to the consumer, disclose that estimate provided that it was the estimate the creditor used to determine approval of the credit transaction. Consistent with the proposal, the Bureau is revising comment 38(a)(3)(vii)-1 to clarify that in circumstances where a creditor may use an estimate of the value of the property as discussed above, if the creditor has

performed its own estimate of the property value for purposes of approving the credit transaction by the time the disclosure is provided to the consumer, the creditor must disclose its own estimate it used for purposes of approving the credit transaction, rather than disclose the estimate provided by the consumer at application.

In response to a commenter's request for additional clarification on how the guidance in comment 38(a)(3)(vii)-1 applies to transactions involving construction where there is no seller, the Bureau is revising comment 38(a)(3)(vii)-1 to clarify that for those transactions, the creditor must disclose the value of the property that is used to determine the approval of the credit transaction, including improvements to be made on the property if those improvements are used to determine the approval of the credit transaction. As discussed above, current comment 38(a)(3)(vii)-1 provides that for transactions where there is no seller, a creditor must disclose under § 1026.38(a)(3)(vii)(B) the value of the property the creditor used to determine approval of the credit transaction. Consistent with the standard that is currently set forth in comment 38(a)(3)(vii)-1, for transactions involving construction where there is no seller, the value of the property disclosed under § 1026.38(a)(3)(vii)(B) must include the improvements to be made on the property if those improvements are used in determining the approval of the credit transaction.

Thus, if a creditor includes improvements to be made on a property in determining the approval of a credit transaction involving construction where there is no seller, the creditor must include the improvements in the disclosure of the value of the property on the Closing Disclosure under § 1026.38(a)(3)(vii). As discussed in the section-by-section analysis of § 1026.37(a)(7), final comment 37(a)(7)-1 allows a creditor the flexibility to include the improvements into the estimated value of the property disclosed on the Loan Estimate under § 1026.37(a)(7), which allows the creditor the option of maintaining consistency between the disclosure that is given on

the Loan Estimate under § 1026.37(a)(7) and the disclosure that will be given on the Closing Disclosure under § 1026.38(a)(3)(vii) by including improvements to be made in both disclosures. On the other hand, if a creditor does not include improvements to be made on the property in determining the approval of a credit transaction involving construction where there is no seller, the creditor must not include the improvements in the disclosure of the value of the property on the Closing Disclosure under § 1026.38(a)(3)(vii). Final comment 37(a)(7)-1 allows a creditor the flexibility not to include the improvements into the estimated value of the property disclosed on the Loan Estimate under § 1026.37(a)(7), which allows the creditor the option of maintaining consistency between the disclosure that is given on the Loan Estimate under § 1026.37(a)(7) and the disclosure that will be given on the Closing Disclosure under § 1026.38(a)(3)(vii) by not including improvements to be made in both disclosures.

38(a)(4) Transaction Information

The Bureau's Proposal

Section 1026.38(a)(4) requires the disclosure of specific information about the transaction, including the name and address of the seller. Comment 38(a)(4)-2 clarifies that, in transactions where there is no seller, such as in a refinancing or home equity loan, the disclosure of the seller's name and address required by § 1026.38(a)(4)(ii) may be left blank. The Bureau proposed to revise comment 38(a)(4)-2 to include a simultaneous subordinate financing purchase transaction as a transaction for which a creditor may leave the § 1026.38(a)(4)(ii) disclosure blank, but only if the first-lien Closing Disclosure will record the entirety of the seller's transaction. The Bureau specifically sought comment on whether the consumer or seller would benefit if the Closing Disclosure for the simultaneous subordinate financing purchase transaction

contains the seller's name and address even if the first-lien Closing Disclosure will record the entirety of the seller's transaction, including the seller's name and address.

Section 1026.38(a)(4)(i) also requires the consumer's name and mailing address, labeled "Borrower." Section 1026.2(a)(11) defines "consumer" as a natural person to whom consumer credit is offered or extended. The definition further provides that, for purposes of rescission under §§ 1026.15 and 1026.23, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest. Proposed comment 38(a)(4)-4 would have required that, in rescindable transactions, pursuant to § 1026.38(a)(4)(i), creditors disclose the name and mailing address of each natural person in whose principal dwelling a security interest is or will be retained or acquired, labeled "Borrower," if that person's ownership interest in the dwelling is or will be subject to the security interest and regardless of whether that person is an obligor.

Simultaneous Subordinate Financing

Comments Received

A title insurance company and a compliance professional expressed support for the proposal. Commenters argued that there is no benefit to the borrower or seller in requiring the disclosure of the seller's name and address in the simultaneous subordinate financing purchase transaction Closing Disclosure because the first-lien Closing Disclosure will already have the seller's name and address. The first-lien Closing Disclosure will be the document to which consumers and sellers will refer to find this information. One commenter also stated that because most simultaneous subordinate financing transactions are handled in files separate from the first-lien transaction, data entry on the part of creditors and settlement agents will be reduced.

The Final Rule

The Bureau is finalizing the proposed amendments to comment 38(a)(4)-2. The Bureau concludes that there is no substantial benefit to the borrower or seller in requiring the disclosure of the seller's name and address on the simultaneous subordinate financing purchase transaction Closing Disclosure if the first-lien Closing Disclosure will record the entirety of the seller's transaction. The Bureau also believes that the amendments to comment 38(a)(4)-2 will reduce industry burden.

Consumers Disclosed with the Label "Borrower"

Comments Received

Several industry commenters supported proposed comment 38(a)(4)-4, which would have required that creditors disclose, using the label "Borrower," the name and mailing address of each natural person in whose principal dwelling a security interest is or will be retained or acquired, regardless of whether that person is an obligor. Vendors and an individual compliance professional commented that the proposal provided helpful guidance for determining which names and addresses should be disclosed under current § 1026.38(a)(4)(i). A vendor group stated that proposed comment 38(a)(4)-4 is consistent with informal guidance previously provided by the Bureau.

However, other industry commenters opposed proposed comment 38(a)(4)-4. Several creditors and trade associations asserted that it is contradictory to disclose non-obligors with the label "Borrower" and that doing so may result in consumer confusion. A creditor commented that the requirement would probably lead to a significant decline in the volume of rescindable transactions involving non-obligor property owners; current Federal regulations, including Regulation Z, do not require disclosing non-obligors as "Borrowers"; and current

§ 1026.37(a)(5) limits disclosure of "Applicants" on the Loan Estimate to only include the name and mailing address of consumers applying for the credit. A trade association and a secondary market investor stated that proposed comment 38(a)(4)-4 would require substantial reprogramming of many loan origination systems; the investor also expressed concern that the proposal may increase the likelihood of disclosure errors. Industry commenters suggested various alternatives to disclosing non-obligors with the label "Borrower," including replacing the label "Borrower" on the Closing Disclosure form with another label such as "consumer"; limiting the term "consumer" in § 1026.38(a)(4)(i) to exclude persons who are not contractually liable for repayment of the debt; or using an addendum, acknowledgement statement, or non-categorized signature line for disclosing non-obligors who have recession rights.

An individual commenter requested clarification regarding how to document non-obligors' receipt of the Closing Disclosure. A secondary market investor requested clarification as to which disclosures must be provided to consumers who have recession rights.

The Final Rule

For the reasons discussed below, the Bureau is not adopting comment 38(a)(4)-4 as proposed and, instead, is revising comment 38(a)(4)-4 so that only the name and mailing address of persons to whom the credit is offered or extended are disclosed pursuant to § 1026.38(a)(4)(i) and labeled "Borrower." After considering commenters' concerns, the Bureau concludes that, for purposes of § 1026.38(a)(4)(i), limiting the term "consumer" to persons to whom the credit is offered or extended will promote meaningful disclosure of credit terms and informed use of credit and will facilitate compliance. By disclosing the name and mailing address only of persons to whom the credit is offered or extended pursuant to § 1026.38(a)(4)(i), the Bureau concludes that, as finalized, comment 38(a)(4)-4 yields a disclosure that is more consistent with

the label “Borrower” and presents less potential for consumer confusion. As finalized, comment 38(a)(4)-4 is also consistent with current § 1026.37(a)(5), which limits disclosure of “Applicants” on the Loan Estimate to only include the name and mailing address of consumers applying for the credit. With respect to a vendor group’s statement that informal guidance previously provided by the Bureau was consistent with proposed comment 38(a)(4)-4, the Bureau understands that there has been uncertainty regarding rescindable transactions as to whether current § 1026.38(a)(4)(i) requires disclosing, with the label “Borrower,” the name and mailing address of each natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person’s ownership interest in the dwelling is or will be subject to the security interest. As finalized in this rule, comment 38(a)(4)-4 will provide helpful guidance for determining which names and addresses should be disclosed under § 1026.38(a)(4)(i). Comment 38(a)(4)-4 does not change the definition of “consumer” in § 1026.2(a)(11) nor does it change the requirements of § 1026.23, including disclosure delivery requirements.

Regarding a commenter’s request for clarification regarding how to document non-obligors’ receipt of the Closing Disclosure, current § 1026.38(s) permits a creditor, at its option, to include a line for the signatures of the consumers in the transaction—and current § 1026.2(a)(11) provides that, for purposes of rescission under §§ 1026.15 and 1026.23, the term “consumer” also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person’s ownership interest in the dwelling is or will be subject to the security interest. If the creditor opts to provide a line for consumers’ signatures, current § 1026.38(s) requires that the creditor disclose, above the signature line, that consumers do not have to accept the loan because they signed or received the form. With respect to the comment requesting clarification as to which disclosures must be provided to consumers who

have recession rights, guidance for closed-end credit can be found in current § 1026.23 and its associated commentary.

In response to comments regarding the effective date and implementation period, as discussed in part VI below, the rule will be effective 60 days from publication in the *Federal Register*, but there will be an optional compliance period in effect until October 1, 2018.

38(d) Costs at Closing

38(d)(2) Alternative Table for Transactions Without a Seller or for Simultaneous Subordinate Financing

The Bureau's Proposal

Section 1026.38(d)(2) permits creditors to use the alternative table on the Closing Disclosure in a transaction without a seller only where the creditor disclosed the optional alternative table under § 1026.37(d)(2) on the Loan Estimate. The Bureau has provided informal guidance that, in purchase transactions with simultaneous subordinate financing, the alternative table may be used for the simultaneous subordinate financing Closing Disclosure if the first-lien Closing Disclosure records the entirety of the seller's transaction and the seller did not contribute to the subordinate financing. The Bureau proposed to amend § 1026.38(d)(2) and comment 38(d)(2)-1 to explicitly permit the use of the alternative table for simultaneous subordinate financing purchase transactions if the first-lien Closing Disclosure records the entirety of the seller's transaction. The Bureau specifically sought comment on whether it is appropriate to limit use of the alternative table for disclosure of simultaneous subordinate financing purchase transactions to situations in which the first-lien Closing Disclosure records the entirety of the seller's transaction.

Comments Received

Commenters included a title insurance company, software vendors, and a bank. Generally commenters supported the Bureau's proposal to allow the use of the alternative table if the first-lien Closing Disclosure records the entirety of the seller's transaction. As discussed more fully in the section-by-section analysis of § 1026.37(d)(2), one commenter questioned what disclosures should be used when the alternative tables were initially used for the simultaneous subordinate financing, but a seller later agrees to contribute to the costs of the subordinate financing, making continued use of the alternative tables impermissible under the proposal. One commenter noted that the proposal could lead to variation among creditors and another commenter stated that the UCD may not allow the use of the alternative disclosures for any transactions with sellers.

The Final Rule

For the reasons discussed below, the Bureau is finalizing the proposed amendments to § 1026.38(d)(2) with minor technical revisions, and finalizing proposed amendments to comment 38(d)(2)-1 with a minor technical revision and revisions to cross-reference related requirements, including those that pertain to first-lien disclosures. The Bureau appreciates the commenter's question regarding how to proceed under the proposal when the alternative table was properly used on the Loan Estimate, or even the Closing Disclosure, but a subsequent event causes the continued use of the alternative table to be impermissible. For the reasons discussed in the section-by-section analysis of § 1026.37(d)(2), the Bureau is directly addressing this concern by adding new comment 38(k)(2)(vii)-1, amending comments 38(d)(2)-1 and 38(j)-3, and amending proposed new comments 38(t)(5)(vii)(B)-1 and -2 to require the disclosure of the seller's contributions to the subordinate financing, if any, in the payoffs and payments table on the

simultaneous subordinate financing Closing Disclosure and the summaries of transactions table on the first-lien Closing Disclosure, when the alternative tables are used for the simultaneous subordinate financing. As discussed in more detail in the section-by-section analysis of § 1026.38(k)(2), the first-lien Closing Disclosure must include, in the summaries of transactions table for the seller's transaction under § 1026.38(k)(2)(vii), any contributions toward the simultaneous subordinate financing from the seller that are disclosed in the payoffs and payments table under § 1026.38(t)(5)(vii)(B), thereby recording the entirety of the seller's transaction on the first-lien Closing Disclosure. Final comment 38(d)(2)-1 includes a cross-reference to comments 38(j)-3 and 38(k)(2)(vii)-1 for related disclosure requirements applicable to the first-lien transaction when the alternative disclosures are used for a simultaneous subordinate financing purchase transaction and a seller contributes to the costs of the subordinate financing. Final comment 38(d)(2)-1 also includes a cross-reference to comments 38(t)(5)(vii)(B)-1 and -2 for the requirement to disclose the seller's contributions toward the subordinate financing in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure.

The Bureau recognizes that allowing the use of the alternative disclosures for simultaneous subordinate financing purchase transactions may cause variability in disclosure among creditors, but concludes that consumers are unlikely to be harmed by such optionality. In addition, the Bureau understands that investor requirements may be more restrictive than the optionality provided by the Bureau. However, the Bureau believes flexibility is beneficial to some creditors, and the Bureau will continue to provide the option for creditors to use the alternative disclosures for simultaneous subordinate financing transactions with sellers.

38(e) Alternative Calculating Cash to Close Table for Transactions Without a Seller or for Simultaneous Subordinate Financing

The Bureau's Proposal

Section 1026.38(e) provides for the disclosure of an alternative calculation of cash or other funds due from or due to the consumer at consummation for transactions without a seller, using the heading "Calculating Cash to Close." Specifically, § 1026.38(e) only permits the use of the alternative calculating cash to close table for a transaction without a seller and requires a creditor to disclose the alternative calculating cash to close table when the creditor disclosed the optional alternative calculating cash to close table on the Loan Estimate under § 1026.37(h)(2). As discussed in the section-by-section analysis of § 1026.37(h) above, the Bureau sought comment on the calculating cash to close table generally. The Bureau has provided informal guidance that, in simultaneous subordinate financing purchase transactions, the alternative calculating cash to close table may be used for the simultaneous subordinate financing Closing Disclosure if the first-lien Closing Disclosure records the entirety of the seller's transaction and the seller did not contribute to the subordinate financing.

The Bureau proposed to amend § 1026.38(e) and comment 38(e)-1 to explicitly permit the use of the alternative calculating cash to close table for simultaneous subordinate financing purchase transactions if the first-lien Closing Disclosure records the entirety of the seller's transaction. The Bureau also proposed to add comment 38(e)-6 to specify which amounts are disclosed under the subheading "Loan Estimate" on the Closing Disclosure's alternative calculating cash to close table. Proposed comment 38(e)-6 clarified that the amounts disclosed under the subheading "Loan Estimate" pursuant to § 1026.38(e)(1)(i), (2)(i), (4)(i), and (5)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer, regardless of

whether those amounts reflected updated amounts provided for informational purposes only or the amounts used for purposes of determining good faith under § 1026.19(e)(3). The Bureau sought comment on whether that approach provides a helpful comparison to consumers with the final amounts disclosed on the Closing Disclosure and sought comment on other alternatives to provide consumers a comparison of estimated and final amounts.

Comments Received

As noted above and discussed more fully in the section-by-section analysis of § 1026.37(h), the Bureau sought comment on the calculating cash to close tables generally. A commenter asserted that the alternative calculating cash to close tables function better, are less complicated, and present less information than the standard tables. Commenters also stated that the calculating cash to close tables provide important benefits to consumers and assist consumers in understanding their transactions by providing them with a high-level view of how their cash to close amounts are determined. See the section-by-section analysis of § 1026.37(h) for a more detailed discussion of those comments that relate to §§ 1026.37(h)(2) and 1026.38(e) generally.

A mortgage banker and software vendor supported proposed revisions to § 1026.38(e) and related commentary. The commenters stated that these proposed revisions, if implemented, will improve the ability of creditors to comply with the calculating cash to close table and provide a more accurate cash to close amount to consumers.

Software vendors, a bank, and a state housing finance agency also commented on the Bureau's proposed amendments to § 1026.38(e) and comment 38(e)-1. Most commenters supported the Bureau's proposal to allow the use of the alternative calculating cash to close table if the first-lien Closing Disclosure records the entirety of the seller's transaction. As discussed more fully in the section-by-section analysis of § 1026.37(d)(2), one commenter questioned what

disclosures should be used when the optional alternative tables were initially used for the simultaneous subordinate financing, but a seller later agrees to contribute to the costs of the subordinate financing, making continued use of the alternative tables impermissible under the proposal. One commenter noted that the proposal could lead to variation among creditors and another commenter stated that the UCD may not allow the use of the alternative disclosures for any transactions with sellers. Finally, a commenter suggested a technical revision to proposed § 1026.38(e).

A compliance professional and a financial holding company supported the proposal to clarify that the amounts disclosed under the subheading "Loan Estimate" under § 1026.38(e)(1)(i), (2)(i), (4)(i), and (5)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer, regardless of whether those amounts reflect updated amounts provided for informational purposes only or the amounts to be used for purposes of determining good faith under § 1026.19(e)(3). One of the commenters stated that the comparison of amounts from the most recent Loan Estimate to the current Closing Disclosure is helpful to consumers and that there do not appear to be other viable alternatives. A software vendor and software vendor group noted that the proposal will help to settle industry differences of opinion, but raised concerns with the proposal, discussed below.

A software vendor, a software vendor group, a credit union, and trade associations questioned the usefulness of the comparison. Commenters cited concerns that the table does not identify tolerance violations for consumers' awareness and does not record amounts on any Closing Disclosures provided to the consumer between the last provided Loan Estimate and the current corrected Closing Disclosure. One commenter asked the Bureau to clarify whether comparison between the "Loan Estimate" and "Final" columns affects the tolerance provisions

under § 1026.19(e)(3). Another commenter stated that good faith was difficult to determine based on a comparison of the amounts disclosed on the last provided Loan Estimate and current Closing Disclosure. In the context of the Bureau's companion proposal in comment 38(i)-5, industry commenters offered alternative approaches to help consumers evaluate changes between disclosures. For a more detailed discussion of these related comments, please see the section-by-section analysis of § 1026.38(i).

A trade association commenter stated that secondary market investors who purchase loans are requiring use of the alternative table for refinances and asked the Bureau to clarify that the standard disclosures may be used for refinance transactions. The commenter argued that it would be helpful if a single disclosure form could be utilized for all types of transactions.

The Final Rule

For the reasons discussed below, the Bureau is finalizing with minor technical revisions the proposed amendments to § 1026.38(e) and comment 38(e)-1 and proposed comment 38(e)-6. The Bureau is also amending comment 38(e)-3 for conformity with final comment 38(i)-2. Final § 1026.38(e) provides that for transactions that do not involve a seller or for simultaneous subordinate financing, if the creditor disclosed the optional alternative calculating cash to close table under § 1026.37(h)(2), the creditor is required also to disclose the alternative calculating cash to close table under § 1026.38(e). Final comment 38(e)-1 explains that the alternative calculating cash to close table may be provided by a creditor in a transaction without a seller, or for a simultaneous subordinate financing purchase transaction only if the first-lien Closing Disclosure records the entirety of the seller's transaction, and must be used in conjunction with the alternative disclosure under § 1026.38(d)(2).

As discussed in the section-by-section analysis of § 1026.37(d)(2), the Bureau appreciates the commenter's question regarding how to proceed under the proposal when the optional alternative calculating cash to close table was initially used, but a subsequent event causes the continued use of the alternative calculating cash to close table to be impermissible. The Bureau is directly addressing this concern by adding new comment 38(k)(2)(vii)-1, amending comments 38(d)(2)-1 and 38(j)-3, and amending proposed new comments 38(t)(5)(vii)(B)-1 and -2 as discussed in the section-by-section analysis of § 1026.37(d)(2).

The Bureau did not propose amendments to comment 38(e)-3, but is making non-substantive amendments for conformity with final comment 38(i)-2. As discussed in the section-by-section analysis of § 1026.38(i) below, the Bureau proposed to revise comment 38(i)-2 to streamline the comment. Although comment 38(i)-2 pertains to § 1026.38(i) and comment 38(e)-3 pertains to § 1026.38(e), the comments are otherwise identical. Therefore, for consistency, the Bureau is making the same revisions to comment 38(e)-3 as it is making to comment 38(i)-2.

The Bureau is finalizing comment 38(e)-6 as proposed with a minor technical revision. Final comment 38(e)-6 provides that the amounts disclosed under the subheading "Loan Estimate" under § 1026.38(e)(1)(i), (2)(i), (4)(i), and (5)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer. The Bureau believes that the comparison of amounts from the last provided Loan Estimate to the current Closing Disclosure, as required by final comment 38(e)-6, is helpful to consumers, and there are not viable alternatives absent completely restructuring the alternative calculating cash to close tables; at this time, restructuring the calculating cash to close tables would be inconsistent with the Bureau's focus in this rulemaking on providing additional clarity in an expeditious manner. The comparison, as part of

the Closing Disclosure's alternative calculating cash to close table, illustrates how such amounts changed from the estimated amounts disclosed on the Loan Estimate, which helps to ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). The table is not intended to identify every single change over the course of the real estate transaction; it is intended to compare the most recent estimated amounts represented to the consumer with the amounts reflecting the actual terms of the transaction. As discussed in the proposal, the amounts disclosed on the Closing Disclosure's alternative calculating cash to close table under the subheadings "Loan Estimate" and "Final" are not, in and of themselves, subject to the § 1026.19(e)(3) good faith standard. These amounts are disclosed based on the best information reasonably available to the creditor at the time the disclosure is provided. Any increases or changes to the amounts, based on the best information reasonably available to the creditor at the time the disclosure is provided, do not result in any separate violation of any standard under Regulation Z. The amounts used for determining good faith may be disclosed over multiple Loan Estimates, or even corrected Closing Disclosures, depending upon the facts and circumstances of the transaction. Accordingly, good faith cannot be determined based on a comparison of the amounts disclosed under the subheadings "Loan Estimate" and "Final" on the Closing Disclosure's alternative calculating cash to close table.

In disclosing amounts under § 1026.38(e)(1)(i), (2)(i), (4)(i), and (5)(i), when there are multiple Loan Estimates provided to a consumer, the current regulatory provisions do not specify a particular Loan Estimate to use. Therefore, it is currently permissible to disclose amounts from any Loan Estimate provided to the consumer in the "Loan Estimate" column of the Closing

Disclosure's alternative calculating cash to close table, and will remain permissible until the mandatory compliance date of this final rule, October 1, 2018. For a discussion of the effective and mandatory compliance dates, see part VI, below.

The trade association commenter is correct that, under the Bureau's regulations, the standard disclosures may be used for refinance transactions. A refinance transaction must be disclosed pursuant to § 1026.38(e) if the creditor previously disclosed the optional alternative table under § 1026.37(h)(2), but use of the optional alternative table under § 1026.37(h)(2) is not required. At the same time, secondary market investors may decide, as a business practice, to impose additional requirements, such as requiring the use of the alternative disclosures for refinance transactions.

38(e)(2) Total Closing Costs

38(e)(2)(ii)

For transactions using the alternative calculating cash to close table, § 1026.38(e)(2)(ii) requires the creditor to disclose the amount of total closing costs disclosed under § 1026.38(h)(1). The total amount of closing costs disclosed under § 1026.38(e)(2)(ii) generally represents an amount owed by the consumer; therefore, the Bureau specified that the total closing costs be disclosed as a negative number. However, lender credits disclosed under § 1026.38(h)(3) may sometimes exceed the subtotal of closing costs under § 1026.38(h)(2), resulting in a net credit to the consumer. In that case, the total closing costs disclosed under § 1026.38(e)(2)(ii) should be disclosed as a positive number to reflect the expected credit to the consumer. Therefore, the Bureau proposed to revise § 1026.38(e)(2)(ii) to explain that the amount disclosed under that paragraph is disclosed as a negative number if the amount disclosed

under § 1026.38(h)(1) is a positive number and is disclosed as a positive number if the amount disclosed under § 1026.38(h)(1) is a negative number.

A software vendor, compliance professional, and trade association commenter praised the proposal. One commenter stated that eliminating the requirement to disclose amounts as positive or negative numbers throughout will go a long way in providing creditors with greater flexibility to complete the calculating cash to close table in a manner that can be explained to consumers and reflects the actual transaction. Another commenter stated that there are a minority of loans which are generated in the industry where total closing costs are actually negative (the consumer will not be paying any closing costs, but will also be receiving some cash back) and this change will enable accurate closing costs to be reflected in the calculating cash to close table. The commenter also requested that the Bureau make a similar change to § 1026.37(h)(2)(ii). A credit union stated generally that there is confusion surrounding the use of negative values on the form, but did not provide specific concerns.

The Bureau is finalizing as proposed the amendments to § 1026.38(e)(2)(ii). The Bureau concludes that this amendment is necessary for closing costs to be accurately reflected in the calculating cash to close table. In response to the comment about § 1026.37(h)(2)(ii), the Bureau notes that it is amending that provision, as discussed in the section-by-section analysis of § 1026.37(h)(2)(ii) above.

38(e)(2)(iii)

Section 1026.38(e)(2)(iii)(A)(*3*) provides that if the amount of closing costs actually charged to the consumer exceeds the limitations on increases in closing costs under § 1026.19(e)(3), the creditor must provide a statement that such increase exceeds the legal limits by the dollar amount of the excess and, if any refund is provided under § 1026.19(f)(2)(v), a

statement directing the consumer to the disclosure required under § 1026.38(h)(3). The Bureau proposed to add comment 38-4, which explained how to disclose a principal curtailment to provide a refund under § 1026.19(f)(2)(v). The comment would have provided that a principal curtailment would be disclosed under § 1026.38(g)(4) or (t)(5)(vii)(B) for transactions using the alternative calculating cash to close table under § 1026.38(e). Accordingly, the Bureau proposed to revise § 1026.38(e)(2)(iii)(A)(*3*) and comment 38(e)(2)(iii)(A)-3 to allow a creditor to provide a statement directing the consumer to the disclosure of the principal curtailment under § 1026.38(g)(4) or (t)(5)(vii)(B), rather than directing the consumer to the disclosure of a refund under § 1026.38(h)(3).

As discussed in more detail in the section-by-section analysis of § 1026.38 pertaining to comment 38-4 above, some industry commenters raised concerns with the various options for disclosing principal curtailments proposed by the Bureau, including disclosure as a closing cost under § 1026.38(g)(4). In addition, an industry group recommended that the Bureau use the phrase "principal reduction" instead of "principal curtailment," noting that consumers would be more familiar with the recommended phrase.

For the reasons discussed below, the Bureau is revising the proposed amendments to § 1026.38(e)(2)(iii)(A)(*3*) and comment 38(e)(2)(iii)(A)-3, and is making conforming amendments to comments 38(e)(2)(iii)(A)-2.i and -2.iii. As discussed in the section-by-section analysis of § 1026.38 pertaining to comment 38-4 above, the Bureau appreciates the suggestion to use the phrase "principal reduction." The Bureau also explained that it is revising proposed comment 38-4 to limit the disclosure of principal reductions on the alternative disclosure to § 1026.38(t)(5)(vii)(B). Therefore the Bureau is revising the proposed amendments to

§ 1026.38(e)(2)(iii)(A)(*3*) and comment 38(e)(2)(iii)(A)-3 to reflect the phrase "principal reduction" and to remove the cross-reference to § 1026.38(g)(4).

As discussed in the section-by-section analysis of § 1026.19(e)(3)(i), the Bureau is amending comment 19(e)(3)(i)-1 to conform with final § 1026.19(e)(3)(iii), which provides exceptions to the general rule that an estimated closing cost is in good faith if the charge paid by or imposed on the consumer does not exceed the estimate for the cost as disclosed on the Loan Estimate. As a result, the Bureau is making conforming amendments in final comments 38(e)(2)(iii)(A)-2.i and -2.iii. Specifically, final comment 38(e)(2)(iii)(A)-2.i clarifies that certain closing costs (*e.g.*, fees paid to the creditor, transfer taxes, fees paid to an affiliate of the creditor) are generally subject to the limitations on increases in closing costs under § 1026.19(e)(3)(i); however, § 1026.19(e)(3)(iii) provides exceptions to the general rule for certain charges. Final comment 38(e)(2)(iii)(A)-2.iii clarifies that, for a charge listed on the Loan Estimate under the subheading "Services You Can Shop For," such charge would generally be subject to the limitations under § 1026.19(e)(3)(i) if the consumer decided to use a provider affiliated with the creditor; however, § 1026.19(e)(3)(iii) provides exceptions to the general rule for certain charges.

38(e)(3) Closing Costs Paid Before Closing

38(e)(3)(iii)

38(e)(3)(iii)(B)

Comment 38(e)(3)(iii)(B)-1 explains the circumstances under which the creditor gives a statement that the amount under the subheading "Final" pursuant to § 1026.38(e)(3)(ii) is equal to the amount disclosed under the subheading "Loan Estimate" pursuant to § 1026.38(e)(3)(i) and, in so doing, refers to an amount of "$0" under the subheading "Final." The Bureau

proposed two technical revisions in comment 38(e)(3)(iii)(B)-1. First, the Bureau proposed to change "$0" to "$0.00" to reflect the disclosure of a dollar amount of zero to two decimal places. Second, the reference to "settlement agent" would be removed from comment 38(e)(3)(iii)(B)-1 because, as the introductory paragraph to § 1026.38(e) makes clear, the responsibility to provide the § 1026.38(e) disclosures lies with the creditor, not the settlement agent.

The Bureau did not receive any specific comments on this proposal and is finalizing the amendment to remove the reference to "settlement agent" from comment 38(e)(3)(iii)(B)-1, but is not finalizing the amendment to change "$0" to "$0.00." The Bureau's proposal would have changed "$0" to "$0.00" in many places in § 1026.38(e) and (i), and the associated commentary, so that dollar amounts of zero would be disclosed consistently in the "Final" column of the Closing Disclosure's calculating cash to close table. Generally, unless amounts are required to be rounded by § 1026.38(t)(4), amounts are disclosed on the Closing Disclosure as exact numerical amounts, using decimal places. Section 1026.38(t)(4) provides for exceptions to this general rule. Upon further consideration, the Bureau is not finalizing the proposed approach, and is instead changing the few instances of "$0.00" to "$0." The Bureau believes this approach will achieve the consistency intended by the proposal, but will be less burdensome to creditors because § 1026.38(e) and (i), and the associated commentary, currently refer to dollar amounts of zero in the "Final" column of the calculating cash to close table as "$0" most of the time.

38(e)(4) Payoffs and Payments

38(e)(4)(ii)

Section 1026.38(e)(4)(ii) provides that the total amount of payoffs and payments made to third parties disclosed under § 1026.38(t)(5)(vii)(B), to the extent known, is disclosed as a negative number. The requirement to disclose a negative number under § 1026.38(e)(4)(ii)

supposes that the total amount disclosed under § 1026.38(t)(5)(vii)(B) will always be a positive number. The Bureau proposed to revise § 1026.38(e)(4)(ii) such that the amount disclosed under § 1026.38(e)(4)(ii) is disclosed as a negative number if the total amount disclosed under § 1026.38(t)(5)(vii)(B) is a positive number, signifying amounts owed by the consumer, and is disclosed as a positive number if the total amount disclosed under § 1026.38(t)(5)(vii)(B) is a negative number, signifying amounts due to the consumer.

A trade association commented that permitting the disclosure of negative or positive amounts will go a long way in providing creditors with greater flexibility to complete the calculating cash to close table in a manner that reflects the actual transaction. A credit union stated generally that there is confusion surrounding the use of negative values on the form, but did not provide specific concerns.

For the reasons discussed below, the Bureau is finalizing the proposed amendments to § 1026.38(e)(4)(ii) with minor technical revisions. In response to the proposed revision of § 1026.38(e)(4)(ii) and other provisions of the proposal, the Bureau received positive feedback that being less prescriptive about whether amounts must be disclosed as negative or positive numbers will enable more accurate disclosure for different types of transactions. The Bureau believes this amendment will facilitate compliance with the Bureau's disclosure requirements.

38(f) Closing Cost Details; Loan Costs

The Bureau proposed to add comment 38(f)-2. Consistent with proposed comments 37(f)-3 and 37(f)(6)-3, proposed comment 38(f)-2 provided that construction loan inspection and handling fees are loan costs associated with the transaction for purposes of the Closing Disclosure under § 1026.38(f). The proposed new comment also added a cross-reference to proposed comments 37(f)-3, 37(f)(6)-3, and app. D-7.viii, making those comments'

discussions of inspection and handling fees for the staged disbursement of construction loan proceeds explicitly applicable to the disclosures required by § 1026.38(f).

The Bureau did not receive any comments on proposed comment 38(f)-2. Having received no comments regarding this proposed revision, the Bureau is finalizing comment 38(f)-2 as proposed, except to make a conforming change to renumber comment app. D-7.viii as comment app. D-7.vii.

38(g) Closing Cost Details; Other Costs

38(g)(1) Taxes and Other Government Fees

Section 1026.38(g)(1) requires creditors to disclose an itemization of each amount that is expected to be paid to State and local governments for taxes and government fees, including recording fees. Closing Disclosure form H-25(A) of appendix H illustrates such disclosures on a line labeled "Recording Fees," with the additional labels "Deed" and "Mortgage," respectively. The Bureau proposed to revise § 1026.38(g)(1) to clarify that the total amount of fees for recording deeds and the total amount of fees for recording security instruments must each be disclosed on the first line under the subheading "Taxes and Other Government Fees" before the columns described in § 1026.38(g) and to clarify that the total amounts paid for recording fees (including but not limited to fees for recording deeds and security instruments) must be disclosed in the applicable column described in § 1026.38(g). In addition, the Bureau proposed to add new comment 38(g)(1)-3 to clarify the labels for recording fees on form H-25(A) of appendix H.

Commenters generally indicated support for the revision and new comment. Several industry commenters sought additional clarification on the use of the term "itemization" in the first paragraph of proposed revisions to § 1026.38(g)(1). Other industry commenters submitted that § 1026.38(g)(1) should be revised to allow for a full itemization of the recording fees

charged to consumers in the transaction to obviate the need for a separate settlement statement that may be provided by settlement agents.

For the reasons stated below, the Bureau is adopting as proposed the revisions to § 1026.38(g)(1) and new comment 38(g)(1)-3. In response to commenters seeking clarification of the use of the term "itemization" the first time it appears in § 1026.38(g)(1), the Bureau notes that § 1026.38(g)(1) requires disclosing recording fees separately from transfer taxes Also, the Bureau notes that transfer taxes are required to be itemized separately pursuant to § 1026.38(g)(1)(ii). In contrast, § 1026.38(g)(1)(i), relating to recording fees, does not include the term "itemization."

As to some industry commenters' request to permit the full itemization of each document recorded in the transaction, the Bureau notes that permitting such a break out for the recording cost of each recordable document would, in some instances, require many more lines, potentially more than could be accommodated on a maximum of two pages, as limited by § 1026.38(t)(5)(iv)(B) and is unlikely to improve consumer understanding of the Closing Disclosure.[87] While not present in all residential mortgage transactions, the list of separate documents that could be required to be recorded depending on State law requirements can include, but is not limited to, certificates of satisfaction or partial satisfaction, contracts, deeds transferring ownership of various types, leases, modification agreements, mortgages or deeds of trust, easements, assumption agreements, covenants, declarations, liens, judgments, and powers of attorney. However, the Bureau notes that the creditor is permitted to provide a further listing of recording fees, at its discretion, as information used locally in real estate settlements pursuant

[87] 78 FR 79730, 80011 (Dec. 31, 2013).

to § 1026.38(t)(5)(ix) in order to comprehensively describe the cost of each document included in the recording fees disclosed under § 1026.38(g)(1)(i). Since commenters otherwise generally supported the this proposal, the Bureau is adopting the proposed revisions to § 1026.38(g)(1) and new comment 38(g)(1)-3 as proposed.

38(g)(2) Prepaids

Current comment 38(g)(2)-3 provides that $0 must be disclosed if interest is not collected for a portion of a month or other period between closing and the date from which interest will be collected with the first monthly payment. The Bureau proposed to revise comment 38(g)(2)-3 to require $0.00 to be disclosed if interest is not collected for a portion of a month or other period between closing and the date from which the interest will be collected with the first monthly payment. The Bureau explained that the amount required to be disclosed under § 1026.38(g)(2) is disclosed to two decimal places in accordance with § 1026.2(b)(4) and comment 38(t)(4)-1.

The Bureau received two comments regarding the proposed revision to comment 38(g)(2)-3. A commenter representing a large bank asserted that the revision would impose significant burden to reprogram and test its systems. The commenter also asserted that the revision would realize little or no benefit to the consumer. A compliance professional asserted that prepaid interest should be left blank, like other amounts, when the value for prepaid interest is zero.

The Bureau is finalizing comment 38(g)(2)-3 as proposed. To remain consistent with the other disclosed dollar amounts under the closing cost details column the Bureau is requiring the disclosure of $0.00 under § 1026.38(g)(2) when prepaid interest is not collected. This requirement is also consistent with § 1026.2(b)(4) and comment 38(t)(4)-1 which requires the

disclosure of dollar amounts to include cents even when the value for cents is zero, unless otherwise provided.

The Bureau believes that the reprogramming cost for this revision will not be significant given that creditors have until October 1, 2018, to come into compliance with this provision and in light of other programming changes that creditors will be making in response to other provisions in this final rule. In response to the commenter that suggested that prepaid interest should be left blank, the label for prepaid interest on the Closing Disclosure form shows components of the prepaid interest equation, including the amount of prepaid interest to be paid per day, and thus the Bureau declines to offer an option to leave blank the amount required to be disclosed by § 1026.38(g)(2).

38(g)(4) Other

The Bureau's Proposal

Comment 38(g)(4)-1 clarifies that the charges for services disclosed under § 1026.38(g)(4) include all real estate brokerage fees, homeowner's or condominium association charges paid at consummation, home warranties, inspection fees, and other fees that are part of the real estate transaction but not required by the creditor or disclosed elsewhere in § 1026.38. Currently, amounts for construction costs, payoff of existing liens, or payoff of unsecured debt may be, but are not required to be, disclosed under § 1026.38(g)(4). As discussed in more detail below and in the section-by-section analysis of § 1026.37(g)(4), above, the Bureau proposed to revise comment 38(g)(4)-1 to require that construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of existing liens secured by the property identified under § 1026.38(a)(3)(vi), and payoff of unsecured debt be disclosed under § 1026.38(g)(4), unless those items are disclosed under § 1026.38(t)(5)(vii)(B) on the optional

alternative calculating cash to close table. Proposed comment 38(g)(4)-1.iii would also have included a reference to comment 38-4 for an explanation of how to disclose a reduction in principal balance (principal curtailment) under § 1026.38(g)(4).

In proposing to revise comment 38-4, the Bureau noted that it expected consumer understanding to be enhanced by the clear and conspicuous disclosure of these amounts in corresponding tables on the Loan Estimate and Closing Disclosure, which would have also created greater consistency between the Loan Estimate and Closing Disclosure.

In the preamble to the proposal, the Bureau noted that it also had considered requiring the disclosure of construction costs, payoff of existing liens, and payoff of unsecured debt on the summaries of transactions table on the Closing Disclosure under § 1026.38(j)(1)(v) instead of as "closing costs" under §§ 1026.37(g)(4) and 1026.38(g)(4). The Bureau noted that disclosing these costs on the summaries of transactions table would not provide for comparability between the Loan Estimate and Closing Disclosure, however, because the Loan Estimate does not have a summaries of transactions table.

The Bureau also noted in the preamble to the proposal that it had considered requiring the disclosure of construction costs only on an addendum, instead of under § 1026.37(g)(4) on the Loan Estimate and § 1026.38(g)(4) on the Closing Disclosure. The construction costs would then be factored into the calculating cash to close table calculations in conjunction with the sale price to yield an accurate cash to close amount. However, the Bureau believed this approach could add more complexity to the calculations required on the Closing Disclosure than disclosure under § 1026.38(g)(4).

The Bureau also proposed to revise comment 38(g)(4)-1 to cross-reference proposed comment app. D-7.vii for an explanation of the disclosure of construction costs for a construction

or construction-permanent loan and proposed comment app. D-7.viii for an explanation of the disclosure of construction loan inspection and handling fees. The Bureau proposed to revise comment 38(g)(4)-1 to clarify that inspection fees disclosed under § 1026.38(g)(4) are for pre-consummation inspection fees, not post-consummation inspection fees, such as those often associated with construction loans. As discussed in the section-by-section analysis of § 1026.38(f), post-consummation inspection fees are to be disclosed in an addendum attached as an additional page after the last page of the Closing Disclosure. Revised comment 38(g)(4)-1 would have also clarified that, if amounts for construction costs are contracted to be paid at closing, even though they will be disbursed after closing, they are disclosed in the paid "At Closing" column.

Comments Received

Comments on the proposed revision of comment 38(g)(4)-1 were generally made together with comments submitted on the proposed revision of comment 37(g)(4)-4 and, similarly, were generally unfavorable. Commenters believed that significant confusion would result from the proposed revision of comment 38(g)(4)-1, which the commenters said would make the closing costs in many loans, including construction loans, appear to be enormous. Commenters stated that consumers would be concerned that loans were prohibitively expensive upon seeing such high "closing costs." Commenters also noted that consumer testing had not been conducted for the proposed required disclosures, and disagreed with what they perceived as giving a greater priority to comparability between the Loan Estimate and the Closing Disclosure than to consumer understanding. Significant staff training and systems reprogramming were also cited as concerns by commenters. A fuller presentation of these comments is in the discussion of comment 37(g)(4)-4 above in the section-by-section analysis of § 1026.37(g)(4).

However, some commenters also pointed out an issue that was specific to proposed comment 38(g)(4)-1. Comments from individual vendors, a group of vendors and a trade association focused on proposed comment 38(g)(4)-1.i, which would have provided that the amounts disclosed under § 1026.38(g)(4) must be placed in either the paid "Before Closing" or in the paid "At Closing" column under the subheading "H. Other." These commenters noted that because proposed comment 38(g)(4)-1.i would have applied to all amounts disclosed under § 1026.38(g)(4), all "Section H" fees would need to appear in these four columns and cannot appear in the "Paid by Others" column. The commenters asked if the result was that fees disclosed under § 1026.38(g)(4) cannot be paid for by anyone other than the borrower or the seller or that fees disclosed under § 1026.38(g)(4) can be paid for by others, but the fee would have to be disclosed in an inappropriate column. One of the commenters contrasted proposed comment 38(g)(4)-1.i with proposed comment 38(g)(4)-1.ii, which explicitly states that "construction costs" should be disclosed under the paid "At Closing" column if such costs are contracted to be paid at closing.

As noted in the discussion of comment 38-4, above, in the section-by-section analysis of § 1026.38 pertaining to comment 38-4, commenters raised concerns regarding the disclosure of principal reductions under § 1026.38(g)(4).

The Final Rule

Consistent with the amendments described in connection with the discussion of proposed comment 37(g)(4)-4, above, the Bureau is not adopting the revision of comment 38(g)(4)-1 as proposed but is instead providing for the disclosure of construction costs in connection with the transaction, payoff of existing liens secured by the property identified under § 1026.37(a)(6), and payoff of other secured or unsecured debt under § 1026.38(j)(1)(v). As noted below, the Bureau

is amending comment 38(j)(1)(v)-2 to include construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of existing liens secured by the property identified in § 1026.37(a)(6), and payoff of other secured and unsecured debt as amounts disclosed under § 1026.38(j)(1)(v). Such amounts are disclosed in the summaries of transactions table on the Closing Disclosure under § 1026.38 (j)(1)(v) and factored into the calculating cash to close table calculations.

The Bureau agrees with the commenters who noted that payoffs of other types of secured debt, such as a loan secured by an automobile or another property, should be treated consistently with other payoffs, and comment 38(j)(1)(v)-2 is further amended to cover such other secured debt.

Proposed comment 38(g)(4)-1.iii, which referred to comment 38-4 for an explanation of how to disclose a reduction in principal balance (principal curtailment) under § 1026.38(g)(4), is also not included in this rule. As explained above in the section-by-section analysis of § 1026.38 pertaining to comment 38-4, the Bureau is revising comment 38-4 to limit the disclosure of principal reductions to § 1026.38(j)(1)(v) and (t)(5)(vii)(B), making the reference to comment 38-4 in comment 38(g)(4)-1 unnecessary.

38(h) Closing Cost Totals

38(h)(3)

Current § 1026.38(h)(3) uses a cross-reference to require disclosure of the amount described in § 1026.37(g)(6)(ii) as a negative number, labeled "Lender Credits." Current § 1026.37(g)(6)(ii) requires disclosure of the amount of any lender credits. As detailed in the section-by-section analysis of § 1026.37(g)(6)(ii), while current comment 37(g)(6)(ii)-1 describes lender credits as payments from the creditor to the consumer that do not pay for a

particular fee on the disclosures, final comment 37(g)(6)(ii)-1 provides that lender credits under § 1026.37(g)(6)(ii) include non-specific lender credits as well as specific lender credits. In contrast with final comment 37(g)(6)(ii)-1, current comment 38(h)(3)-1 provides that a credit from the creditor that is attributable to a specific loan cost or other cost is not disclosed under § 1026.38(h)(3) (but rather is reflected in the Paid by Others column in the Closing Cost Details tables under § 1026.38(f) or (g)). To conform with the amendment to comment 37(g)(6)(ii)-1, the Bureau is amending § 1026.38(h)(3) to remove the cross-reference to § 1026.37(g)(6)(ii).

38(i) Calculating Cash to Close

The Bureau's Proposal

Section 1026.38(i) requires the disclosure of the calculation of cash needed from the consumer at consummation of the transaction, using the heading "Calculating Cash to Close." The Bureau proposed amendments to § 1026.38(i) and its commentary regarding the calculating cash to close table on the Closing Disclosure pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a). The Bureau stated that it believed that the amendments would effectuate the purposes of TILA by facilitating the informed use of credit. Providing consumers with information about the cash to close amount, its critical components, and how such amounts changed from the estimated amounts disclosed on the Loan Estimate helps ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). As discussed more fully in the section-by-section analysis of § 1026.37(h) above, the Bureau sought comment on the calculating cash to close table generally.

As discussed in more detail below, the Bureau proposed to revise comments 38(i)-2 and 38(i)-3, and to add comment 38(i)-5. Under § 1026.38(i), the calculating cash to close table sets forth three subheadings: "Loan Estimate," "Final," and "Did this change?." Current comment 38(i)-2 provides guidance on comparing the amounts that are disclosed under the subheadings "Loan Estimate" and "Final" on the Closing Disclosure's calculating cash to close table. The Bureau proposed to revise comment 38(i)-2 to streamline the comment. Current comment 38(i)-3 provides that § 1026.38(i)(4)(iii)(A), (5)(iii)(A), (7)(iii)(A), and (8)(iii)(A) each require a statement that the consumer should see certain details of the closing costs disclosed under § 1026.38(j) and provides examples of those statements in appendix H, including an example related to the seller credits disclosure on the calculating cash to close table. The Bureau proposed to revise comment 38(i)-3 for consistency with proposed changes to § 1026.38(i)(7), the seller credits disclosure in the calculating cash to close table.

The Bureau proposed to add comment 38(i)-5 to clarify that the amounts disclosed under the subheading "Loan Estimate" pursuant to § 1026.38(i)(1)(i), (3)(i), (4)(i), (5)(i), (6)(i), (7)(i), (8)(i), and (9)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer, regardless of whether the amounts on the most recent Loan Estimate provided to the consumer reflect updated amounts provided for informational purposes only or the amounts to be used for purposes of determining good faith under § 1026.19(e)(3). The Bureau explained that the disclosures on the Closing Disclosure's calculating cash to close table under the subheadings "Loan Estimate" and "Final" are not, in and of themselves, subject to the § 1026.19(e)(3) good faith standard. These amounts are disclosed based on the best information reasonably available to the creditor at the time the disclosure is provided and any increases or changes to the amounts based on the best information reasonably available to the creditor do not result in any separate

violation of any standard under Regulation Z. For purposes of determining good faith under § 1026.19(e)(3), the amounts used are the amounts disclosed under § 1026.37, and may be disclosed over multiple Loan Estimates, or even corrected Closing Disclosures, depending upon the facts and circumstances of the transaction. Accordingly, good faith cannot be determined based on a comparison of the amounts disclosed under the subheadings "Loan Estimate" and "Final" on the Closing Disclosure's calculating cash to close table. The Bureau sought comment on this approach. In particular, the Bureau sought comment on whether the disclosure of the amounts on the most recent Loan Estimate on the calculating cash to close table provides a helpful comparison to consumers with the final amounts disclosed on the Closing Disclosure. The Bureau also sought comment on other alternatives to provide consumers with a comparison of estimated and final amounts.

Comments Received

As noted above and discussed more fully in the section-by-section analysis of § 1026.37(h), the Bureau sought comment on the calculating cash to close tables generally. A variety of commenters acknowledged that the calculating cash to close tables provide important benefits to consumers and that the proposed revisions would improve the ability of creditors to comply with the calculating cash to close requirements and provide to consumers a more accurate cash to close amount. Commenters stated that the calculating cash to close tables enable consumers to understand components of their cash to close amount without the need to wade through the detailed line items in the summaries of transactions table, and described the calculating cash to close tables as conducting many of the difficult calculations behind-the-scenes so that consumers can review the high-level components of the calculations, which generally mirror how they think about the transaction. However, a number of other commenters

stated that the standard calculating cash to close tables are confusing and complicated. Many commenters specifically identified the "Closing Costs Financed (Paid from your Loan Amount)" and "Down Payment/Funds from Borrower" labels and calculations as the main areas of concern, asserting that the mathematical formulas used to calculate the disclosures do not reflect how consumers understand those amounts in the context of a residential real estate transaction. Commenters opposing the proposed amendments suggested a variety of solutions, including that the Bureau remove the standard calculating cash to close tables, "fix" the tables completely, or leave the tables alone. See the section-by-section analysis of § 1026.37(h) for a more detailed discussion of those comments that relate to §§ 1026.37(h) and 1026.38(i) generally.

The Bureau did not receive comments on its proposal related to comments 38(i)-2 and 38(i)-3, but received several comments on proposed comment 38(i)-5. In particular, a mortgage company supported the Bureau's proposal to add comment 38(i)-5 to clarify that the amounts disclosed under the subheading "Loan Estimate" under § 1026.38(i)(1)(i), (3)(i), (4)(i), (5)(i), (6)(i), (7)(i), (8)(i), and (9)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer, regardless of whether the amounts on the most recent Loan Estimate provided to the consumer reflect updated amounts provided for informational purposes only or the amounts to be used for purposes of determining good faith under § 1026.19(e)(3). The commenter stated that it is beneficial for the consumer to be able to compare the amounts disclosed on the most recent Loan Estimate to the amounts disclosed on the Closing Disclosure, and that most creditors are likely following this practice already. However, the commenter also noted this clarification might require reprogramming for some creditors, and recommended that the Bureau provide creditors with six months to implement final comment 38(i)-5. A software

vendor and software vendor group noted that the proposal will help to settle industry differences of opinion, but raised concerns with the proposal, discussed below.

A software vendor, a software vendor group, a credit union, mortgage companies, and trade associations questioned the usefulness of the comparison. Commenters cited concerns that the table does not identify tolerance violations for consumers' awareness and does not record amounts on any Closing Disclosures provided to the consumer between the last provided Loan Estimate and the current corrected Closing Disclosure. One commenter asked the Bureau to clarify whether comparison between the "Loan Estimate" and "Final" columns affects the tolerance provisions under § 1026.19(e)(3). Another commenter stated that good faith was difficult to determine based on a comparison of the amounts disclosed on the last provided Loan Estimate and current Closing Disclosure.

Industry commenters offered alternative approaches to help consumers evaluate changes between disclosures. A mortgage company commented that the best alternative, for purposes of consumer comparisons between the Loan Estimate and the current Closing Disclosure, is for consumers to simply lay the most recent Loan Estimate next to the Closing Disclosure, and then compare the closing costs that are disclosed on each disclosure. The commenter asserted that the calculating cash to close tables were not necessary for this purpose, and that consumer testing and the Bureau's similar design for closing costs on the Loan Estimate and Closing Disclosure already supports this alternative. A trade association recommended that the Bureau remove the comparison aspect of the table and instead require a comparison of loan costs and lender credits that can be used to identify tolerance violations. A trade association, software vendor, and software vendor group suggested the comparison instead be between amounts disclosed on the last disclosure, whether it be a Loan Estimate or Closing Disclosure, and the current Closing

Disclosure, which would provide the consumer with timely updates and information as to why costs increased or decreased between the two disclosures and a history of why things changed from one disclosure to the next.

The Final Rule

After considering the comments, the Bureau is not in this final rule deviating significantly from the proposed amendments, which address many questions the Bureau has received from industry on the proper calculation of the various amounts disclosed on the calculating cash to close tables and the variation among creditors in how the calculating cash to close disclosures are determined. The Bureau believes that finalizing the proposed amendments to the calculating cash to close table, with some revisions as discussed in the applicable section-by-section analyses, is necessary in order to resolve issues that have arisen during the initial implementation of the TILA-RESPA Rule and on which industry has asked the Bureau for guidance. The Bureau has been, and remains, engaged in extensive efforts to support industry implementation, and finalizing proposed clarifications and amendments related to the calculating cash to close tables is one such effort. See the section-by-section analysis of § 1026.37(h) for a discussion of the Bureau's rationale for not following some commenters' recommendations to remove the calculating cash to close tables, significantly revise the tables, or not finalize the proposed amendments to the tables.

For the reasons discussed in this section, the Bureau is adopting comment 38(i)-2 as proposed to clarify how amounts are disclosed under the subheading "Loan Estimate" on the Closing Disclosure's calculating cash to close table, with minor technical revisions. The Bureau also is adopting comment 38(i)-3 as proposed with revisions to conform to final § 1026.38(i)(7)

and other minor technical revisions. The Bureau concludes these amendments to comments 38(i)-2 and -3 are necessary and will aid in compliance.

The Bureau is finalizing comment 38(i)-5 as proposed. Final comment 38(i)-5 provides that the amounts disclosed in the "Loan Estimate" column of the calculating cash to close table under § 1026.38(i)(1)(i), (3)(i), (4)(i), (5)(i), (6)(i), (7)(i), (8)(i), and (9)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer. The Bureau believes that the comparison of amounts from the last provided Loan Estimate to the current Closing Disclosure, as required by final comment 38(i)-5, is helpful to consumers, and there are not viable alternatives absent completely restructuring the calculating cash to close tables; at this time, restructuring the calculating cash to close tables would be inconsistent with the Bureau's focus in this rulemaking on providing additional clarity in an expeditious manner. The comparison, as part of the Closing Disclosure's calculating cash to close table, illustrates how such amounts changed from the estimated amounts disclosed on the Loan Estimate, which helps to ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). The table is not intended to identify every single change over the course of the real estate transaction; it is intended to compare the most recent estimated amounts represented to the consumer with the amounts reflecting the actual terms of the transaction. As discussed in the proposal, the amounts disclosed on the Closing Disclosure's calculating cash to close table under the subheadings "Loan Estimate" and "Final" are not, in and of themselves, subject to the § 1026.19(e)(3) good faith standard. These amounts are disclosed based on the best information reasonably available to the creditor at the time the disclosure is provided. Any

increases or changes to the amounts, based on the best information reasonably available to the creditor at the time the disclosure is provided, do not result in any separate violation of any standard under Regulation Z. The amounts used for determining good faith may be disclosed over multiple Loan Estimates, or even corrected Closing Disclosures, depending upon the facts and circumstances of the transaction. Accordingly, good faith cannot be determined based on a comparison of the amounts disclosed under the subheadings "Loan Estimate" and "Final" on the Closing Disclosure's calculating cash to close table.

In disclosing amounts under § 1026.38(i)(1)(i), (3)(i), (4)(i), (5)(i), (6)(i), (7)(i), (8)(i), and (9)(i), when there are multiple Loan Estimates provided to a consumer, the current regulatory provisions do not specify a particular Loan Estimate to use. Therefore, it is currently permissible to disclose amounts from any Loan Estimate provided to the consumer in the "Loan Estimate" column of the Closing Disclosure's calculating cash to close table, and will remain permissible until the mandatory compliance date of this final rule, October 1, 2018. For a discussion of the effective date and optional compliance period, see part VI, below.

38(i)(1) Total Closing Costs

38(i)(1)(iii)

The Bureau's Proposal

Section 1026.38(i)(1)(iii)(A) specifies that, if the amount of closing costs disclosed under the subheading "Final" in the row labeled "Total Closing Costs (J)" is different than the estimated amount of such costs as shown on the Loan Estimate (unless the difference is due to rounding), the creditor must state, under the subheading "Did this change?," that the consumer should see the total loan costs and total other costs subtotals disclosed on the Closing Disclosure under § 1026.38(f)(4) and (g)(5) and include a reference to such disclosures, as applicable.

Section 1026.38(i)(1)(iii)(A)(*3*) also requires a statement that an increase in closing costs exceeds legal limits (*i.e.*, under § 1026.19(e)(3)) by the dollar amount of the excess and a statement directing the consumer to the disclosure of lender credits under § 1026.38(h)(3) if a credit is provided under § 1026.19(f)(2)(v). Comments 38(i)(1)(iii)(A)-2.i, -2.iii, and -3 provide guidance regarding these statements. The Bureau proposed to revise § 1026.38(i)(1)(iii)(A)(*3*) and comment 38(i)(1)(iii)(A)-3 to provide additional options for disclosing refunds to consumers. Specifically, the Bureau proposed to clarify that a reduction in principal balance (principal curtailment) may be disclosed under § 1026.38(g)(4), (j)(4)(i), or (t)(5)(ix) to provide a tolerance refund under § 1026.19(f)(2)(v). Proposed revisions to § 1026.38(i)(1)(iii)(A)(*3*) and comment 38(i)(1)(iii)(A)-3 would have allowed a creditor to provide a statement directing the consumer to the disclosure of a principal curtailment under § 1026.38(g)(4), (j)(4)(i), or (t)(5)(ix) if a principal curtailment, instead of a lender credit, was used to provide such refund. As a result of these proposed amendments, the Bureau also proposed to revise comment 38(i)(1)(iii)(A)-3 to clarify that the examples of statements provided by form H-25(F) of appendix H only relate to statements provided under § 1026.38(h)(3).

Comments Received

As discussed in more detail in the section-by-section analysis of § 1026.38 pertaining to comment 38-4 above, some industry commenters raised concerns with the various options for disclosing principal curtailments proposed by the Bureau. Commenters also requested additional clarity regarding the disclosure of a principal curtailment pursuant to § 1026.38(j)(4)(i). Specifically, the commenters questioned where in the summaries of transactions table the disclosure is to be made, since § 1026.38(j)(4)(i) contains the requirement to disclose costs that are not paid from closing funds but would otherwise be disclosed pursuant to § 1026.38(j)

marked with the phrase “Paid Outside of Closing” or “P.O.C.,” but does not provide a specific location for the principal curtailment disclosure. In addition, an industry group recommended that the Bureau use the phrase “principal reduction” instead of “principal curtailment,” noting that consumers would be more familiar with the recommended phrase. A title insurance company requested that the Bureau update the sample forms to reflect the disclosure of principal curtailments, similar to how form H-25(F) of appendix H contains examples of the required statements under § 1026.38(h)(3), which is referenced in comment 38(i)(1)(iii)(A)-3.

The Final Rule

For the reasons discussed below, the Bureau is adopting amendments to § 1026.38(i)(1)(iii)(A)(*3*) and comment 38(i)(1)(iii)(A)-3 as proposed with technical and conforming revisions, and amending comments 38(i)(1)(iii)(A)-2.i and -2.iii. The Bureau is revising § 1026.38(i)(1)(iii)(A)(*3*) and comment 38(i)(1)(iii)(A)-3 to use the phrase “principal reduction” for clarity. As discussed in the section-by-section analysis of § 1026.38 pertaining to comment 38-4 above, the Bureau is revising comment 38-4 to clarify that principal reductions disclosed in the summaries of transactions table are disclosed under § 1026.38(j)(1)(v), not § 1026.38(j)(4)(i), and to limit the disclosure of principal reductions to § 1026.38(j)(1)(v) on the standard Closing Disclosure. As a result, the Bureau is making conforming amendments in final § 1026.38(i)(1)(iii)(A)(*3*) and final comment 38(i)(1)(iii)(A)-3 to remove the proposed references to § 1026.38(g)(4), (j)(4)(i), and (t)(5)(ix) and to instead only refer to § 1026.38(j)(1)(v). The Bureau declines to update the sample forms at this time as requested by a commenter. Doing so would be inconsistent with the Bureau’s focus in this rulemaking on providing additional clarity in an expeditious manner.

As discussed in the section-by-section analysis of § 1026.19(e)(3)(i), the Bureau is modifying comment 19(e)(3)(i)-1 to conform to final § 1026.19(e)(3)(iii), which provides exceptions to the general rule that an estimated closing cost is in good faith (*i.e.*, does not exceed legal limits) if the charge paid by or imposed on the consumer does not exceed the estimate for the cost as disclosed on the Loan Estimate. As a result, the Bureau is making conforming amendments in final comments 38(i)(1)(iii)(A)-2.i and -2.iii. Specifically, final comment 38(i)(1)(iii)(A)-2.i clarifies that certain closing costs (*e.g.*, fees paid to the creditor, transfer taxes, fees paid to an affiliate of the creditor) are generally subject to the limitations on increases in closing costs under § 1026.19(e)(3)(i); however, § 1026.19(e)(3)(iii) provides exceptions to the general rule for certain charges. Final comment 38(i)(1)(iii)(A)-2.iii clarifies that, for a charge listed on the Loan Estimate under the subheading "Services You Can Shop For," such charge would generally be subject to the limitations under § 1026.19(e)(3)(i) if the consumer decided to use a provider affiliated with the creditor; however, § 1026.19(e)(3)(iii) provides exceptions to the general rule for certain charges.

38(i)(2) Closing Costs Paid Before Closing

38(i)(2)(iii)

38(i)(2)(iii)(B)

Comment 38(i)(2)(iii)(B)-1 discusses the circumstances under which the creditor gives a statement that the amount disclosed under the subheading "Final" under § 1026.38(i)(2)(ii) is equal to the amount disclosed under the subheading "Loan Estimate" under § 1026.38(i)(2)(i) and, in so doing, refers to an amount of "$0" under the subheading "Final." The Bureau proposed to change $0 to $0.00 to reflect the disclosure of a dollar amount of zero to two decimal places. The Bureau did not receive comments specific to this proposal. However, for

the reasons discussed in the section-by-section analysis of § 1026.38(e)(3)(iii)(B), the Bureau is not finalizing the proposed amendment to comment 38(i)(2)(iii)(B)-1.

38(i)(3) Closing Costs Financed

The Bureau's Proposal

Section 1026.38(i)(3) requires the disclosure of the actual amount of the closing costs that are to be paid out of loan proceeds, as a negative number, and a comparison of the estimated and actual amounts of the closing costs that are to be paid out of loan proceeds. If the amount under the subheading "Final" in the row labeled "Closing Costs Financed (Paid from your Loan Amount)" is different than the estimated amount (unless the excess is due to rounding), the creditor must state under the subheading "Did this change?" that the consumer included these closing costs in the loan amount, which increased the loan amount.

The Bureau proposed to add comment 38(i)(3)-1 to explain that the amount of closing costs financed disclosed under § 1026.38(i)(3) is determined by subtracting the total amount of payments to third parties not otherwise disclosed under § 1026.38(f) and (g) from the loan amount disclosed under § 1026.38(b). The proposed comment explained that the total amount of payments to third parties includes the sale price of the property disclosed under § 1026.38(j)(1)(ii). Proposed comment 38(i)(3)-1 also explained that if the result of the calculation is zero or negative, the amount of $0.00 would be disclosed under § 1026.38(i)(3); if the result of the calculation is positive, that amount would be disclosed as a negative number under § 1026.38(i)(3), but only to the extent that the absolute value of the amount disclosed under § 1026.38(i)(3) does not exceed the total amount of closing costs disclosed under § 1026.38(h)(1).

Consistent with proposed comment 37(h)(1)(ii)-2, the Bureau proposed to add comment 38(i)(3)-2 to clarify that the loan amount disclosed under § 1026.38(b) is the total amount the consumer will borrow, as reflected by the face amount of the note. The proposed comment explained that financed closing costs, such as mortgage insurance premiums payable at or before consummation, do not reduce the loan amount. The intent of this proposed comment was to clarify that regardless of how the term "loan amount" is used by creditors or in relation to programmatic requirements of specific loan programs, for purposes of the Closing Disclosure, the amount disclosed as the loan amount under § 1026.38(b), and the basis for the calculating cash to close table calculations, is the total amount the consumer will borrow as reflected by the face amount of the note. This definition of loan amount under § 1026.38(b) would not have affected how other agencies define or use similar terms for purposes of their own programmatic requirements. For example, the "base loan amount" and "total loan amount," as those terms are used for loans made under FHA programs, may not be the same as the loan amount required to be disclosed under § 1026.38(b).

Comments Received

The Bureau received several comments on proposed comment 38(i)(3)-1. As discussed in the section-by-section analysis of § 1026.37(h)(1)(ii), two industry commenters noted a slight inconsistency between the language describing the closing costs financed calculations for the Loan Estimate in comment 37(h)(1)(ii)-1 and the Closing Disclosure in comment 38(i)(3)-1. Such inconsistency could permit creditors to use two different calculations for the closing costs financed disclosures.

A title insurance company requested that the Bureau update the sample forms to reflect $0.00 instead of $0 because the proposed new commentary would require disclosure of $0.00 if the result of the closing costs financed calculation was zero or negative.

A software vendor group stated that, in the absence of a method for calculating the closing costs financed on the Closing Disclosure, some lending platforms have been completing the closing costs financed disclosure on the Closing Disclosure by entering the amount of closing costs that have been added to the amount requested or subtracted from the loan proceeds under § 1026.38(i)(3)(ii). The commenter stated that the approach yields a cash to close amount in the calculating cash to close table consistent with the cash to close amount in the summaries of transactions table. The commenter indicated that amending its current practice to be consistent with proposed comment 38(i)(3)-1 would require a substantial reprogramming effort. A software vendor and software vendor group stated that using the calculation method in proposed comment 38(i)(3)-1 to determine the amount of closing costs financed potentially could be confusing to consumers. Another software vendor stated that the calculation method in proposed comment 38(i)(3)-1 does not align with the language in § 1026.38(i)(3). Finally, as discussed in the section-by-section analysis of § 1026.37(h)(1), regarding the proposal to clarify that, on the simultaneous subordinate financing Loan Estimate, the sale price disclosed under § 1026.37(a)(7) would not be used in any of the § 1026.37(h)(1) calculations, a title insurance company noted that the Bureau did not make a corresponding change for the Closing Disclosure.

The Bureau received several comments on proposed comment 38(i)(3)-2. As discussed in the section-by-section analysis of § 1026.37(h)(1)(ii), consistent with comments received on proposed comment 37(h)(1)(ii)-2, a software vendor expressed support for the Bureau's proposed comment 38(i)(3)-2 to clarify that financed mortgage insurance premiums do not

reduce the loan amount used in the calculation. One trade association commenter did not support requiring the loan amount disclosed in § 1026.38(b) to be used in the closing costs financed calculation; instead, the commenter indicated that creditors should be permitted to use the "base loan amount."

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For the reasons discussed below, the Bureau is adopting proposed comment 38(i)(3)-1 in part with revisions and adopting proposed comment 38(i)(3)-2 with revisions. To address the slight inconsistency between the language describing the closing costs financed calculation for the Loan Estimate and Closing Disclosure in the proposed amendments to comment 37(h)(1)(ii)-1 and proposed new comment 38(i)(3)-1, respectively, the Bureau is amending comment 37(h)(1)(ii)-1, as discussed in the section-by-section analysis of § 1026.37(h)(1)(ii), for consistency with comment 38(i)(3)-1. Therefore, the Bureau is adopting the relevant proposed revisions to comment 38(i)(3)-1.

For the reasons discussed in the section-by-section analysis of § 1026.38(e)(3)(iii)(B), the Bureau is not finalizing the proposed amendment to comment 38(i)(3)-1 which would have changed "$0" to "$0.00." The Bureau is also not conducting a systematic review of sample forms at this time. As discussed in the section-by-section analysis of Appendix H—Closed-End Forms and Clauses below, doing so would be inconsistent with the Bureau's focus in this rulemaking on providing additional clarity in an expeditious manner.

As discussed above, some commenters raised concerns with the Closing Disclosure's closing costs financed calculation set forth in proposed comment 38(i)(3)-1. In the TILA-RESPA Final Rule, the Bureau added comment 37(h)(1)(ii)-1 to specify a method to calculate the amount of closing costs to be paid from mortgage loan proceeds on the Loan Estimate, in

response to comments asking how to conduct the calculation.[88] However, the Bureau did not add a similar comment regarding the Closing Disclosure's closing costs financed disclosure. The Bureau recognizes that this omission has caused confusion in the industry and the industry has taken varying approaches to disclosing the amount of closing costs financed on the Closing Disclosure absent a formula. As discussed in part VI below, the Bureau is committed to giving industry sufficient time to reprogram its software to accommodate the formula. This final rule will be effective 60 days from publication in the *Federal Register*, but there will be an optional compliance period in effect until October 1, 2018.

As discussed in more detail in the section-by-section analysis of § 1026.37(h), several commenters expressed concern that the closing costs financed disclosure may result in a disclosure that does not necessarily align with consumers' understanding of their transactions, and that consumers may not recognize that there is a calculation that determines this disclosure component. One solution raised by commenters is to include the formula in the calculating cash to close table. The Bureau does not adopt this recommendation because it does not believe that including the formula would be helpful to consumers. The table intentionally conducts the calculations behind-the-scenes so that consumers can review the high-level components of the calculation. Another solution raised by commenters is to create a new label for the closing costs financed disclosure so that consumers would not associate the amount disclosed on the currently labeled "Closing Costs Financed (Paid from your Loan Amount)" line of the calculating cash to close table with the amount of closing costs they understand to be financed in their transactions. The Bureau does not adopt this recommendation because the labels were developed through

[88] 78 FR 79730, 79967 (Dec. 31, 2013).

consumer testing processes, and it is not feasible, on the expedited schedule of this rulemaking, to reengage in consumer testing to validate revised labels. Although consumer testing of disclosures is not necessary in all instances, the Bureau considers that such testing is important in this context.

As discussed above, one software vendor stated that the calculation method in proposed comment 38(i)(3)-1 does not align with the language in the regulatory text. The Bureau does not agree with this assertion. Section 1026.38(i)(3) requires disclosure of the actual amount of the closing costs that are to be paid out of loan proceeds. Because money is fungible, in order to create standardized disclosures that can be utilized in a wide variety of transaction types, the Bureau had to create formulas that earmarked loan funds for specific disclosures, including the closing costs financed disclosure; the closing costs financed disclosure formula in final comment 38(i)(3)-1 explains to creditors how to determine the amount of closing costs that are to be paid out of loan proceeds for all transaction types in a standardized manner. The Bureau concludes that it is important to specify a method to calculate the amount of closing costs to be paid from loan proceeds on the Closing Disclosure to create consistency and uniformity for this disclosure component, and to ensure that all of the calculating cash to close disclosure components work together to yield an accurate amount of cash due from or to the borrower at closing.

The Bureau is revising comment 38(i)(3)-1 to explain that for some loans, such as simultaneous subordinate financing transactions, no sale price will be disclosed under § 1026.38(j)(1)(ii) in accordance with comment 38(j)(1)(ii)-1. While this revision is not necessary, the Bureau believes the reference to comment 38(j)(1)(ii)-1 in comment 38(i)(3)-1 may be helpful to creditors conducting the closing costs financed calculation for simultaneous subordinate financing.

The Bureau is also amending comment 38(i)(3)-1 to include additional examples for consistency with comments 37(h)(1)(ii)-1 and 38(g)(4)-1. As discussed in the section-by-section analysis of § 1026.38(g)(4), the Bureau is not finalizing the proposal that would have required construction costs, payoff of existing liens, and payoff of unsecured debt to be disclosed under § 1026.38(g)(4). Because amounts for construction costs, payoff of existing liens, and payoff of unsecured debt are disclosed under § 1026.38(j)(1)(v), they will be included in the closing costs financed calculation as payments to third parties not otherwise disclosed under § 1026.38(f) and (g).

The Bureau is finalizing comment 38(i)(3)-2 with revisions. The Bureau believes its statement in proposed new comment 38(i)(3)-2 that the loan amount is the total amount the consumer will borrow as reflected by the face amount of the note is sufficiently clear and is therefore streamlining the comment by removing the example. The Bureau is making minor technical revisions for greater consistency with comment 37(h)(1)(ii)-2, but is not otherwise amending proposed comment 38(i)(3)-2 as requested by a commenter. The loan amount as disclosed under § 1026.38(b) is an integral part of the closing costs financed calculation, and the calculating cash to close table generally. The Bureau emphasizes that this definition of loan amount in § 1026.38(b) does not affect how other agencies may define or use similar terms for purposes of their own programmatic requirements. For example, the “base loan amount” and “total loan amount,” as those terms are used for loans made under FHA programs, may not be the same as the loan amount required to be disclosed under § 1026.38(b).

38(i)(4) Down Payment/Funds From Borrower

The Bureau's Proposal

Section 1026.38(i)(4)(ii)(A) requires the down payment and funds from borrower amount in a purchase transaction as defined in § 1026.37(a)(9)(i) to be disclosed as a positive number. In these transactions, the amount is calculated as the difference between the purchase price of the property and the principal amount of the credit extended. The calculation does not capture the amount of existing loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv). Section 1026.38(i)(4)(ii)(B) requires that, in all other transactions, the amount is determined in accordance with § 1026.38(i)(6)(iv). As discussed below, the Bureau proposed to revise § 1026.38(i)(4)(ii)(A) and comment 38(i)(4)(ii)(A)-1. The Bureau also proposed to add comment 38(i)(4)(ii)(A)-2.

Specifically, the Bureau proposed to revise § 1026.38(i)(4)(ii)(A) to account for any amount disbursed to the consumer or used at the consumer's discretion at consummation of the transaction in purchase transactions. Proposed § 1026.38(i)(4)(ii)(A)(*1*) would have provided that, in a purchase transaction as defined in § 1026.37(a)(9)(i), the creditor subtracts the sum of the loan amount and any amount for loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv) from the sale price of the property, except when the sum of the loan amount and any amount for loans assumed or taken subject to exceed the sale price of the property. Proposed § 1026.38(i)(4)(ii)(A)(*2*) would have provided that when the sum of the loan amount and any amount for existing loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv) exceeds the sale price of the property, the creditor instead would have calculated the funds from the consumer in accordance with § 1026.38(i)(6)(iv). Proposed comment 38(i)(4)(ii)(A)-2 would have explained that the amount the creditor discloses under

§ 1026.38(i)(4)(ii)(A)(*2*) is determined in accordance with the funds for borrower calculation under § 1026.38(i)(6)(iv).

Proposed comment 38(i)(4)(ii)(A)-1 would have explained the calculation that must be followed for accurate disclosure of the down payment/funds from borrower amount on the Closing Disclosure. The proposed comment also would have explained that the minimum cash investments required of consumers and referred to as "down payments" under some loan programs would not necessarily be reflected in the disclosure, and disclosure of the calculated amount would not affect compliance or non-compliance with such loan programs' requirements.

Section 1026.38(i)(4)(ii)(B) provides that in a transaction other than the type described in § 1026.38(i)(4)(ii)(A), the creditor discloses the funds from the consumer in accordance with the formula in § 1026.38(i)(6)(iv), labeled "Down Payment/Funds from Borrower." Current comment 38(i)(4)(ii)(B)-1 provides that under § 1026.38(i)(6)(iv), the final amount of funds from the borrower disclosed under § 1026.38(i)(4)(ii)(B) is determined by subtracting from the total amount of all existing debt being satisfied in the real estate closing and disclosed under § 1026.38(j)(1)(v) (except to the extent the satisfaction of such existing debt is disclosed under § 1026.38(g)) the principal amount of the credit extended. The Bureau proposed to revise § 1026.38(i)(4)(ii)(B) for conformity with proposed amendments to § 1026.38(i)(4)(ii)(A). The Bureau proposed to revise comment 38(i)(4)(ii)(B)-1 to clarify that the "total amount of all existing debt being satisfied" means the sum of amounts disclosed under § 1026.38(j)(1)(ii), (iii), and (v). The Bureau sought comment on whether defining the phrase "total amount of all existing debt being satisfied" to mean specifically amounts disclosed under § 1026.38(j)(1)(ii), (iii), and (v) is too prescriptive and how else the Bureau might provide greater clarity around amounts that must be included in this calculation as part of the "total amount of all existing debt

being satisfied." The Bureau also proposed to revise comment 38(i)(4)(ii)(B)-1 for conformity with proposed amendments to § 1026.38(i)(4)(ii)(B). In addition, the Bureau proposed a technical revision in comment 38(i)(4)(ii)(B)-1 to change $0 in reference to the final amount to $0.00 to reflect the disclosure of a dollar amount of zero to two decimal places.

Comments Received

In response to the Bureau's general solicitation of comment on the calculating cash to close table, many commenters raised concerns with the down payment/funds from borrower disclosure requirements. The Bureau discusses commenters' general concerns in the section-by-section analysis of § 1026.37(h). The comments summarized below are related to the Bureau's specific proposals under § 1026.38(i)(4) and its commentary.

As discussed more fully in the section-by-section analysis of § 1026.37(h)(1)(iii), commenters supported the Bureau's proposal to account for the amount expected to be disbursed to the consumer or used at the consumer's discretion at consummation for purchase transactions. Some commenters raised concerns about the distinction between the Bureau's proposed down payment disclosure calculation and minimum cash investments required of consumers under some loan programs, which may also be called "down payments" under those loan programs.

In response to the Bureau's request for comments on whether defining the phrase "total amount of all existing debt being satisfied" to mean specifically amounts disclosed under § 1026.38(j)(1)(ii), (iii), and (v) is too prescriptive, a title insurance company responded that it did not believe such a definition was too prescriptive. However, the commenter cautioned that the proposed amendments to the commentary of § 1026.38(g)(4) regarding payoffs of amounts secured by real property would have unintended consequences because under the proposal, that debt would not have been disclosed under any of those paragraphs of § 1026.38(j).

A commenter raised a concern that the Bureau's requirement to label the amount of funds from the consumer disclosed under § 1026.38(i)(4)(ii) as "Down Payment/Funds from Borrower" when using the "Funds for Borrower" calculation under § 1026.38(i)(6)(iv) conflicts with the "Funds for Borrower" disclosure requirements of § 1026.38(i)(6)(ii). The commenter cited to § 1026.38(i)(4)(ii)(B)(2), which does not exist. The commenter may have been referring to comment 38(i)(4)(ii)(A)-2 or comment 38(i)(4)(ii)(B)-1.

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For the reasons discussed below and in the section-by-section analysis of § 1026.37(h)(1)(iii), the Bureau is adopting the amendments to § 1026.38(i)(4)(ii)(A) as proposed with several revisions. The Bureau also is adopting conforming revisions to § 1026.38(i)(4)(ii)(B). In addition, the Bureau generally is adopting, with revisions, the proposed amendments to comments 38(i)(4)(ii)(A)-1 and 38(i)(4)(ii)(B)-1, and proposed comment 38(i)(4)(ii)(A)-2, and is making a conforming amendment to comment 38(i)(4)(iii)(A)-1. For the reasons discussed in the section-by-section analysis of § 1026.38(e)(3)(iii)(B), the Bureau is not finalizing the proposed amendment to comment 38(i)(4)(ii)(B)-1 which would have changed "$0" to "$0.00," and is amending proposed comment 38(i)(4)(ii)(A)-2 to reflect "$0" instead of "$0.00."

Consistent with final § 1026.37(h)(1)(iii) and for the reasons discussed in the section-by-section analysis of § 1026.37(h)(1)(iii), the Bureau is adopting the amendments to § 1026.38(i)(4)(ii)(A) and (B), and adopting comment 38(i)(4)(ii)(A)-2, as proposed with revisions discussed above and revisions to clarify how § 1026.38(i)(4)(ii) applies to simultaneous subordinate financing purchase transactions and purchase transactions with improvements to be made on the property. Specifically, final § 1026.38(i)(4)(ii)(A)(*2*) provides that for a purchase

transaction that is a simultaneous subordinate financing transaction or that involves improvements to be made on the property, the amount of funds from the consumer is determined in accordance with § 1026.38(i)(6)(iv). Because simultaneous subordinate financing is specifically covered by final § 1026.38(i)(4)(ii)(A)(*2*), it is no longer necessary to reference in § 1026.38(i)(4)(ii)(A)(*1*) the sale price disclosed under § 1026.38(j)(1)(ii) instead of the sale price disclosed under § 1026.38(a)(3)(vii)(A). The Bureau notes that for transactions that use the down payment/funds from borrower calculation under § 1026.38(i)(4)(ii)(A)(*1*), the sale price disclosed on page 1 of the Closing Disclosure under § 1026.38(a)(3)(vii)(A) will be the same as the sale price disclosed in the summaries of transactions table on page 3 of the Closing Disclosure pursuant to § 1026.38(j)(1)(ii). Therefore, in final § 1026.38(i)(4)(ii)(A)(*1*) the Bureau is referencing the sale price disclosed under § 1026.38(a)(3)(vii)(A), consistent with the corresponding provision for the Loan Estimate, and is making conforming amendments to final § 1026.38(i)(4)(ii)(A)(*2*).

The Bureau is also making several technical revisions to comments 38(i)(4)(ii)(A)-1 and -2, and 38(i)(4)(ii)(B)-1. Specifically, the Bureau is revising comments 38(i)(4)(ii)(A)-2 and 38(i)(4)(ii)(B)-1 to make technical revisions to reflect the phrase "total amount of all existing debt being satisfied in the transaction" instead of "total amount of all existing debt being satisfied in the real estate closing" for consistency with the terminology used in § 1026.37. Similar amendments are discussed in the section-by-section analysis of § 1026.38(i)(6)(iv).

As discussed above, a commenter cautioned that the proposed amendments to the commentary of § 1026.38(g)(4) regarding the payoffs of amounts secured by real property would have unintended consequences to the proposal to define existing debt being satisfied in the transaction as the amounts that are disclosed on the Closing Disclosure under § 1026.38(j)(1)(ii),

(iii), and (v). As discussed in the section-by-section analysis of § 1026.38(g)(4), the Bureau is not finalizing the proposal that would have required construction costs, payoff of existing liens, and payoff of unsecured debt to be disclosed under § 1026.38(g)(4).

The Bureau also is amending comments 38(i)(4)(ii)(A)-1 and-2, 38(i)(4)(ii)(B)-1, and 38(i)(4)(iii)(A)-1 to make clear that the disclosure required under § 1026.38(i)(4)(ii)(A) or (B), respectively, represents both the down payment and the funds from the borrower. For the reasons discussed in the section-by-section analysis of § 1026.37(h)(1)(iii), the Bureau is not making other amendments to comment 38(i)(4)(ii)(A)-1 in response to the comments that raised concerns with the Bureau's distinction between the down payment disclosure calculation and minimum cash investments required of consumers under some loan programs, except to explain that the down payment and funds from borrower calculation is independent of any loan program or investor requirements.

Although the Bureau is not able to determine the commenter's precise concern regarding the potentially conflicting labeling requirements in § 1026.38(i)(4)(ii) and (6)(ii), the Bureau is revising § 1026.38(i)(4)(ii)(B) and comments 38(i)(4)(ii)(A)-2 and 38(i)(4)(ii)(B)-1 to provide greater clarity regarding the calculations and labeling requirements in § 1026.38(i)(4)(ii) and (6)(ii).

38(i)(5) Deposit

The Bureau proposed a technical revision in comment 38(i)(5)-1 to specify that, when no deposit is paid in connection with a purchase transaction, the amount disclosed on the Closing Disclosure under § 1026.38(i)(5)(ii) is $0.00 to reflect the disclosure of a dollar amount of zero to two decimal places. The Bureau did not receive comments on this proposal. For the reasons discussed in the section-by-section analysis of § 1026.38(e)(3)(iii)(B), the Bureau is not

finalizing the proposed amendment to comment 38(i)(5)-1 which would have changed "$0" to "$0.00." The Bureau is, however, finalizing other proposed minor technical revisions to comment 38(i)(5)-1.

38(i)(6) Funds for Borrower

38(i)(6)(ii)

Comment 38(i)(6)(ii)-1 provides clarification about how the funds for borrower amount is determined under § 1026.38(i)(6)(iv) and to whom such amount is disbursed. The Bureau proposed to revise comment 38(i)(6)(ii)-1 to conform to proposed revisions and clarifications to § 1026.38(i)(6)(iv). The Bureau proposed to add comment 38(i)(6)(ii)-2 to conform to proposed revisions to comment 37(h)(1)(v)-1.

As discussed more fully in the section-by-section analysis of § 1026.37(h)(1)(v), commenters supported the Bureau's proposed amendments and clarifications to the funds for borrower disclosure in §§ 1026.37(h)(1)(v) and 1026.38(i)(6) and the associated commentary. Commenters stated that the amendments will allow the accurate reflection of proceeds due to the borrower at closing and urged the Bureau to adopt the proposed amendments. One commenter supported the clarification in the proposed revisions to comment 38(i)(6)(ii)-1 that the "total amount of all existing debt being satisfied" is the total of the amounts disclosed under § 1026.38(j)(1)(ii), (iii), and (v). A commenter noted a slight wording difference between proposed comment 37(h)(1)(v)-2 and proposed amendments to comment 38(i)(6)(ii)-1 regarding the Loan Estimate and Closing Disclosure, respectively. Specifically, proposed comment 37(h)(1)(v)-2 provided that the total amount of all existing debt being satisfied in the transaction includes the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v). This commenter interpreted the word

"includes" to mean "includes, but is not limited to," whereas the proposed amendments to comment 38(i)(6)(ii)-1 make clear that for the Closing Disclosure the total amount of all existing debt being satisfied is the sum of the amounts that are disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v). The commenter requested that the Bureau revise the comments for better consistency and alignment.

For the reasons discussed below, the Bureau is finalizing with revisions the proposed amendments to comments 38(i)(6)(ii)-1 and proposed comment 38(i)(6)(ii)-2. The Bureau's amendments to comment 38(i)(6)(ii)-1 and proposed comment 38(i)(6)(ii)-2 are necessary to conform to the amendments made to § 1026.38(i)(6)(iv) and for clarity. As discussed above and in the section-by-section analysis of § 1026.37(h)(1)(v), a commenter noted a slight wording difference between proposed comment 37(h)(1)(v)-2 pertaining to the Loan Estimate and the proposed amendments to comment 38(i)(6)(ii)-1 pertaining to the Closing Disclosure. The Bureau is revising comment 37(h)(1)(v)-2 to replace the word "includes" with the phrase "is the sum of" for consistency and alignment with final comment 38(i)(6)(ii)-1.

As discussed in the section-by-section analyses of § 1026.37(h)(1)(iii) and (v), the Bureau is amending comments 37(h)(1)(iii)-1 and 37(h)(1)(v)-1 to make clear that the disclosure required under § 1026.37(h)(1)(iii) represents both the down payment and other funds from the borrower. The Bureau is similarly amending proposed comment 38(i)(6)(ii)-2 to make clear that the disclosure required under § 1026.38(i)(4)(ii)(A)(*1*) represents both the down payment and funds from the borrower. In addition, the Bureau is streamlining the comment for greater clarity.

As discussed in the section-by-section analysis of § 1026.38(e)(3)(iii)(B), the Bureau's proposal would have changed "$0" to "$0.00" in many places in § 1026.38(e) and (i), and the associated commentary, so that dollar amounts of zero would be disclosed consistently in the

"Final" column of the Closing Disclosure's calculating cash to close table. Generally, unless amounts are required to be rounded by § 1026.38(t)(4), amounts are disclosed on the Closing Disclosure as exact numerical amounts, using decimal places. Section 1026.38(t)(4) provides for exceptions to this general rule. Upon further consideration, the Bureau is not finalizing the proposed approach, and is instead changing the few instances of "$0.00" to "$0." The Bureau believes this approach will achieve the consistency intended by the proposal, but will be less burdensome to creditors because § 1026.38(e) and (i), and the associated commentary, currently refer to dollar amounts of zero in the "Final" column of the calculating cash to close table as "$0" most of the time. Therefore, the Bureau is making conforming amendments to comment 38(i)(6)(ii)-1 and proposed comment 38(i)(6)(ii)-2 to change "$0.00" to "$0."

38(i)(6)(iv)

Section 1026.38(i)(6)(iv) provides that the funds from borrower disclosed under § 1026.38(i)(4)(ii)(B) and funds for borrower disclosed under § 1026.38(i)(6)(ii) are determined by subtracting the principal amount of the credit extended (excluding closing costs financed disclosed under § 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the real estate closing and disclosed under § 1026.38(j)(1)(v) (except to the extent the satisfaction of such existing debt is disclosed under § 1026.38(g)). This calculation does not capture the amount of existing loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv). The Bureau proposed to revise § 1026.38(i)(6)(iv) to account for the amount expected to be disbursed to the consumer or used at the consumer's discretion at consummation of the transaction in purchase transactions and loans assumed or taken subject to, and to clarify that the phrase "total amount of all existing debt being satisfied" means amounts that are disclosed in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v). The

Bureau sought comment on whether defining the phrase "total amount of all existing debt being satisfied" to mean amounts disclosed under § 1026.38(j)(1)(ii), (iii), and (v) is too prescriptive and how else the Bureau might provide greater clarity around amounts that must be included in this calculation as part of the "total amount of all existing debt being satisfied." The Bureau also proposed technical revisions to § 1026.38(i)(6)(iv)(A), (B), and (C) which explain the amounts to disclose under § 1026.38(i)(4)(ii) and (6)(ii). Specifically, in paragraphs (A), (B), and (C), the Bureau proposed to change "$0" to "$0.00" to reflect the disclosure of a dollar amount of zero to two decimal places.

As discussed in the section-by-section analysis of § 1026.37(h)(1)(v), a number of commenters supported the Bureau's proposed amendments to account for the amount expected to be disbursed to the consumer or used at the consumer's discretion at consummation in purchase transactions. Two commenters stated that the proposed amendments would allow the accurate reflection of proceeds due to the borrower and urged the Bureau to adopt the proposed amendments.

In response to the Bureau's request for comments on whether defining the phrase "total amount of all existing debt being satisfied" to mean specifically amounts disclosed under § 1026.38(j)(1)(ii), (iii), and (v) is too prescriptive, a title insurance company responded that it did not believe such a definition was too prescriptive. However, the commenter cautioned that the proposed amendments to the commentary of § 1026.38(g)(4) regarding payoffs of amounts secured by real property would have unintended consequences because that debt would not be disclosed under § 1026.38(j)(1)(ii), (iii), or (v).

A title insurance company also noted that the integrated disclosure sample form H-25(B) displays $0, not $0.00. The commenter requested that the Bureau revise sample form H-25(B) to illustrate $0.00 instead of $0.

For the reasons discussed below, the Bureau is generally adopting § 1026.38(i)(6)(iv) as proposed with technical revisions, but, for the reasons discussed in the section-by-section analysis of § 1026.38(e)(3)(iii)(B), the Bureau is not finalizing the proposed amendment to § 1026.38(i)(6)(iv) which would have changed "$0" to "$0.00." The amendments the Bureau proposed to make to § 1026.38(i)(6)(iv) and which the Bureau is finalizing are necessary to conform to final § 1026.38(i)(4). The Bureau is making technical revisions to § 1026.38(i)(6)(iv) to reflect the full label "Down Payment/Funds from Borrower" instead of only "Funds from Borrower" for greater clarity. The Bureau is also revising § 1026.38(i)(6)(iv) to use the phrase "total amount of all existing debt being satisfied in the transaction" instead of "total amount of all existing debt being satisfied in the real estate closing" for consistency with the terminology used in § 1026.37.

As discussed above, a commenter cautioned that the proposed amendments to the commentary of § 1026.38(g)(4) regarding the payoffs of amounts secured by real property would have unintended consequences to the proposal to define existing debt being satisfied in the transaction as the amounts that are disclosed on the Closing Disclosure under § 1026.38(j)(1)(ii), (iii), and (v). As discussed in the section-by-section analysis of § 1026.38(g)(4), the Bureau is not finalizing the proposal that would have required construction costs, payoff of existing liens, and payoff of unsecured debt to be disclosed under § 1026.38(g)(4).

The Bureau is not conducting a systematic review of sample forms at this time. As discussed in the section-by-section analysis of Appendix H—Closed-End Forms and Clauses

below, doing so would be inconsistent with the Bureau's focus in this rulemaking on providing additional clarity in an expeditious manner.

38(i)(7) Seller Credits

The Bureau's Proposal

Section 1026.38(i)(7) requires creditors to compare the amount of seller credits disclosed on the Loan Estimate under § 1026.37(h)(1)(vi) to the amount disclosed on the Closing Disclosure under § 1026.38(j)(2)(v). If there is a difference (for reasons other than rounding), § 1026.38(i)(7)(iii)(A) requires the creditor to disclose a statement that the consumer should see the seller credits disclosed under § 1026.38(j)(2)(v). The amount of seller credits disclosed on the Loan Estimate under § 1026.37(h)(1)(vi) may include only general (*i.e.*, lump sum) seller credits or general credits and specific seller credits. However, § 1026.38(j)(2)(v) and comment 38(j)(2)(v)-1 state that only general seller credits are disclosed under § 1026.38(j)(2)(v), whereas seller credits attributable to a specific cost should be reflected in the seller-paid column in the closing cost details table under § 1026.38(f) or (g).

Consistent with § 1026.38(j)(2)(v) and comment 38(j)(2)(v)-1, the Bureau proposed to amend to § 1026.38(i)(7)(iii)(A) to provide that, if there is a difference between the amount of seller credits disclosed under §§ 1026.37(h)(1)(vi) and 1026.38(j)(2)(v) that is not attributed to rounding of the amount disclosed under § 1026.37(h)(1)(vi), the creditor must disclose a statement that the consumer should see the details disclosed under § 1026.38(j)(2)(v) and, as applicable, in the seller-paid column under § 1026.38(f) or (g). The Bureau also proposed new comment 38(i)(7)(iii)(A)-1 with examples of the required statement.

Comments Received

The Bureau received comments on these proposed changes from various industry commenters, including a title insurance company, a group of software vendors, and a non-bank. Some commenters supported the change, other commenters requested different requirements from what the Bureau proposed, and some requested additional clarity.

An industry commenter noted that if creditors are given discretion to disclose a statement that the consumer should see the details disclosed in both the seller-paid column on page 2 and Section L under form H-25(B) in appendix H, when the seller credit only appears in one of those locations (*i.e.*, is only general or only specific), this creates consumer confusion. Instead, the commenter stated that the Bureau should require a statement that consumer should only see the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table if the credit is general, or only be directed to the seller-paid column of § 1026.38(f) and (g) if the credit is specific. Conversely, industry software vendor commenters stated that the Bureau should require a statement that the consumer should see the details in the seller-paid column under § 1026.38(f) or (g) and in § 1026.38(j)(2)(v) for every transaction, as the proposed amendments to § 1026.38(i)(7)(iii)(A) would be burdensome and challenging for software vendors to implement. An industry individual commenter requested that the Bureau change the "Seller Credits" line in the calculating cash to close table to distinguish between general seller credits and specific seller credits, to ease consumer confusion.

The Final Rule

Based on comments received, the Bureau is finalizing § 1026.38(i)(7)(iii)(A) and comment 38(i)(7)(iii)(A)-1 with revisions. In response to the commenter who requested that the Bureau require a statement that consumer should only see the details disclosed under

§ 1026.38(j)(2)(v) in the summaries of transactions table if the credit is general, or only be directed to the seller-paid column of § 1026.38(f) and (g) if the credit is specific, the Bureau is providing this option in the final rule. However, the Bureau does not believe that requiring all creditors to provide a statement that consumers should only see the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table if the credit is general, or only be directed to the seller-paid column of § 1026.38(f) and (g) if the credit is specific, would substantially aid in consumer understanding and is concerned that doing so may be burdensome. In response to the commenters who requested that the Bureau require a statement that the consumer should see the details in the seller-paid column under § 1026.38(f) or (g) and § 1026.38(j)(2)(v) for every transaction in order to reduce implementation burden, the Bureau is providing this option in the final rule. However, the Bureau declines to require creditors to provide a statement that the consumer should see the details in the seller-paid column under § 1026.38(f) or (g) and § 1026.38(j)(2)(v) for every transaction because doing so would eliminate the option for a creditor to provide more clarity for consumers by specifying which section the change in seller credits is located, if it is only located in the closing cost details table under § 1026.38(f) or (g) or the summaries of transactions table under § 1026.38(j)(2)(v). As finalized, § 1026.38(i)(7) will provide more accurate information to consumers, while providing optionality to ease compliance for industry. The Bureau declines to revisit major policy decisions in this rulemaking, such as the commenter request to change the "Seller Credits" line in the calculating cash to close table to distinguish between general seller credits and specific seller credits.

Pursuant to commenter requests for additional clarity, the Bureau provides the following discussion. Creditors will now have options for the text under the subheading "Did this change,"

when disclosing a difference in the amount of seller credits from the Loan Estimate to the Closing Disclosure, depending on whether the seller credits are either entirely general, entirely specific, or both. A creditor may, under the subheading "Did this change?," either disclose a statement that the consumer should see the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table and the seller-paid column of § 1026.38(f) and (g), or disclose a statement that the consumer should see the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table if the credit is general, or the seller-paid column of § 1026.38(f) and (g) if the credit is specific. If the difference in "Seller Credits" in the calculating cash to close table is attributable to general and specific seller credits, the creditor must disclose a statement that the consumer should see the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table and the seller-paid column of § 1026.38(f) and (g).

38(i)(8) Adjustments and Other Credits

38(i)(8)(i)

Section 1026.38(i)(8)(i) requires disclosure under the subheading "Loan Estimate" of the amount disclosed on the Loan Estimate under § 1026.37(h)(1)(vii) rounded to the nearest whole dollar, labeled "Adjustments and Other Credits." The Bureau proposed a technical revision in § 1026.38(i)(8)(i) to remove the phrase "rounded to the nearest whole dollar." The amount disclosed on the Loan Estimate under § 1026.37(h)(1)(vii) that is required to be disclosed under § 1026.38(i)(8)(i) is already rounded to the nearest whole dollar in accordance with § 1026.37(o)(4)(i)(A).

The Bureau did not receive any comments on this proposal. However, a trade association commenter stated that sample form H-25(B) contains a final value of -$1,035.04, which the commenter asserted was in violation of § 1026.38(i)(8)(i) because the amount is not rounded to

the nearest whole dollar, and requested that the Bureau amend the sample form to correctly reflect the disclosure requirements.

For the reasons discussed below, the Bureau is finalizing the technical revision to § 1026.38(i)(8)(i) as proposed. The Bureau concludes that this technical revision is necessary. In response to the commenter's assertion that the disclosure of -$1,035.04 in sample form H-25(B) is in violation of § 1026.38(i)(8)(i), the Bureau disagrees. On sample form H-25(B), -$1,035.04 is disclosed under the subheading "Final" pursuant to § 1026.38(i)(8)(ii), not § 1026.38(i)(8)(i). The amount disclosed under § 1026.38(i)(8)(i) is the amount disclosed on the Loan Estimate under § 1026.37(h)(1)(vii), and that amount is the amount required to be rounded to the nearest whole dollar in accordance with § 1026.37(o)(4)(i)(A).

38(i)(8)(ii)

Section 1026.38(i)(8)(ii) provides that the amount disclosed under the subheading "Final" is the total of the amounts due from the borrower disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) and (v) through (x), reduced by the amounts already paid by or on behalf of the borrower disclosed on the Closing Disclosure under § 1026.38(j)(2)(vi) through (xi). However, because amounts disclosed under § 1026.38(j)(1)(iii) and (v) may have already been factored into calculations for prior components of the calculating cash to close table, thereby being counted twice, the Bureau proposed to revise § 1026.38(i)(8)(ii) to clarify that, when amounts disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments disclosed on the Closing Disclosure under § 1026.38(j)(1)(v) are accounted for in the calculations for § 1026.38(i)(4) or (6) as existing debt being satisfied in the transaction, as provided by proposed revisions to those paragraphs, they are not also counted in the adjustments and other credits calculation. The Bureau also proposed a technical revision to comment 38(i)(8)(ii)-1, which

incorrectly references § 1026.37(h)(7) instead of § 1026.37(h)(1)(vii). The Bureau did not receive comments on these proposals. The Bureau is finalizing the amendments to § 1026.38(i)(8)(ii) with a minor technical revision and finalizing comment 38(i)(8)(ii)-1 as proposed. The Bureau continues to believe that, in order to arrive at a more accurate cash to close amount, it is necessary to prevent amounts disclosed under § 1026.38(j)(1)(iii) and (v) from being counted twice in the calculating cash to close table calculations.

38(i)(8)(iii)

The Bureau proposed to revise § 1026.38(i)(8)(iii)(A) to conform to proposed revisions to § 1026.38(i)(8)(ii). As discussed in the section-by-section analysis of § 1026.38(i)(8)(ii) above, the Bureau is finalizing the exclusion of the amounts disclosed under § 1026.38(j)(1)(iii) or (v) that are accounted for in the calculations for § 1026.38(i)(4) or (6) as existing debt being satisfied in the transaction from the calculation of adjustments and other credits under § 1026.38(i)(8)(ii). The Bureau did not receive comments on this proposed amendment. Because the proposed amendment to § 1026.38(i)(8)(iii)(A) is necessary to conform to final § 1026.38(i)(8)(ii), the Bureau is adopting the amendment to § 1026.38(i)(8)(iii)(A) as proposed.

38(j) Summary of Borrower's Transaction

Comment 38(j)-3 clarifies that certain amounts disclosed under § 1026.38(j) are the same as the amounts disclosed under corresponding provisions identified in § 1026.38(k). The Bureau proposed to revise comment 38(j)-3 to conform to the proposed revisions to § 1026.38(j)(2)(vi).

The Bureau did not receive any comments on its proposed amendments to comment 38(j)-3. However, the Bureau has decided not to finalize the proposed revision to comment 38(j)-3 that certain amounts disclosed under § 1026.38(j)(2)(vi) and (k)(2)(viii) are identical if the amount disclosed under § 1026.38(j)(2)(vi) is attributable to contractual adjustments between

the consumer and the seller. Instead the Bureau finalizing comment 38(j)(2)(vi)-6 to cross-reference § 1026.38(k)(2)(viii), which requires disclosure of a description and amount of any and all other obligations required to be paid by the seller at the real estate closing.

For the reasons discussed in this section, the Bureau is revising comment 38(j)-3 for consistency with new comment 38(k)(2)(vii)-1. As discussed in the section-by-section analysis of § 1026.38(k)(2), the Bureau is adding comment 38(k)(2)(vii)-1 to explain that if the simultaneous subordinate financing purchase transaction is disclosed using the alternative tables pursuant to § 1026.38(d)(2) and (e), the first-lien Closing Disclosure must include, in the summaries of transactions table for the seller's transaction under § 1026.38(k)(2)(vii), any contributions toward the simultaneous subordinate financing from the seller that are disclosed in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) on the simultaneous subordinate financing Closing Disclosure. As a result, amounts disclosed under § 1026.38(j)(2)(v) and (k)(2)(vii) will not be identical. The amount disclosed under § 1026.38(j)(2)(v) will reflect the lump sum seller credit on the first-lien Closing Disclosure, whereas the amount disclosed under § 1026.38(k)(2)(vii) will reflect the lump sum seller credits on the first-lien Closing Disclosure and the simultaneous subordinate financing Closing Disclosure, when the alternative tables are used for the simultaneous subordinate financing. Therefore, the Bureau is amending comment 38(j)-3 to provide that the amounts disclosed under § 1026.38(j)(2)(v) and (k)(2)(vii) will be identical unless seller contributions toward a simultaneous subordinate financing transaction are disclosed under § 1026.38(t)(5)(vii)(B) on the simultaneous subordinate financing Closing Disclosure and § 1026.38(k)(2)(vii) on the first-lien Closing Disclosure.

38(j)(1) Itemization of Amounts Due from Borrower

38(j)(1)(ii)

In purchase transactions where there is a seller, the contract sales price is disclosed under § 1026.38(j)(1)(ii), in addition to § 1026.38(a)(3)(vii)(A). To conform with proposed amendments to the commentary of § 1026.37(h)(1) regarding the use of the sale price in the calculating cash to close table calculations on the simultaneous subordinate financing Loan Estimate as discussed above, the Bureau proposed to revise comment 38(j)(1)(ii)-1. As revised, comment 38(j)(1)(ii)-1 would have clarified that the sale price would not be disclosed under § 1026.38(j)(1)(ii) on the simultaneous subordinate financing Closing Disclosure.

The Bureau did not receive comments specific to the proposed conforming amendments to comment 38(j)(1)(ii)-1. As discussed in the section-by-section analysis of § 1026.37(h)(1), the Bureau is finalizing the proposal regarding the use of the sale price in the calculating cash to close table calculations on the simultaneous subordinate financing Loan Estimate. For these reasons, the Bureau is finalizing the corresponding amendments to comment 38(j)(1)(ii)-1 as proposed.

38(j)(1)(v)

Section 1026.38(j)(1)(v) requires the creditor to provide a description and the amount of any additional seller-paid items that are reimbursed by the consumer at the real estate closing. It also requires a description and the amount of any other items owed by the consumer not otherwise disclosed under § 1026.38(f), (g), or (j). Comment 38(j)(1)(v)-1 provides examples of amounts disclosed under § 1026.38(j)(1)(v), which include contractual adjustments not disclosed elsewhere under § 1026.38(j). The Bureau proposed to revise comment 38(j)(1)(v)-1 to clarify that the amounts disclosed under this provision can include amounts owed to the seller but

payable to the consumer after the real estate closing, providing the following as examples: any balance in the seller's reserve account held in connection with an existing loan, if assigned to the consumer in a loan assumption; any rent the consumer would collect after closing for a time period prior to closing; and any tenant security deposit. Proposed comment 38(j)(1)(v)-1 also provides that the amounts owed to the seller but payable to the consumer after the real estate closing would be listed under the heading "Adjustments." In addition, the Bureau proposed to revise comment 38(j)(1)(v)-2 to conform to the proposed revisions to comment 38(g)(4)-1. As discussed in the section-by-section analysis of § 1026.38(g)(4) above, the Bureau proposed to require the disclosure of the payoff of existing liens secured by the property identified in § 1026.38(a)(3)(vi) under the heading "H. Other" of the other costs table on the Closing Disclosure. The Bureau therefore proposed to revise comment 38(j)(1)(v)-2 to conform to the proposed amendments to comment 38(g)(4)-1.

For the reasons discussed in this section, the Bureau is adopting comment 38(j)(1)(v)-1 as proposed, is not adopting the proposed amendments to comment 38(j)(1)(v)-2 but is otherwise revising the comment, and is adding comment 38(j)(1)(v)-3. The Bureau did not receive comments regarding proposed amendments to comment 38(j)(1)(v)-1 or -2.

The Bureau is not adopting the proposed amendments to comment 38(j)(1)(v)-2. As discussed in the section-by-section analyses of §§ 1026.37(g)(4) and 1026.38(g)(4), the Bureau is not finalizing the proposal that would have required certain costs and payoffs, including construction costs, the payoff of existing liens secured by the property and other secured or unsecured debt, to be disclosed on the Loan Estimate and Closing Disclosure as closing costs. That proposal, if finalized, would have made the disclosure of these costs and payoffs under § 1026.38(j)(1)(v) impermissible. Because the Bureau is not finalizing the proposed

amendments to comment 38(g)(4)-1, the Bureau is also not finalizing the proposed conforming revision in comment 38(j)(1)(v)-2.

Because the Loan Estimate does not have a disclosure comparable to that in the summaries of transactions table under § 1026.38(j)(1)(v), amounts that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v) will be disclosed on the Loan Estimate in one of two ways. In transactions subject to § 1026.37(h)(1)(iii)(A)(*2*) and (B), a creditor factors amounts that will be disclosed under § 1026.38(j)(1)(v), such as those paid to any holders of existing liens on the property in a refinance transaction, construction costs in connection with the transaction that the consumer will be obligated to pay, and payoffs of other secured or unsecured debt, into the funds for borrower calculations under § 1026.37(h)(1)(v) on the Loan Estimate. Because these amounts will be disclosed under § 1026.38(j)(1)(v) on the Closing Disclosure, they are included in existing debt that is factored into the funds for borrower calculation under §°1026.37(h)(1)(v). Comment 37(h)(1)(v)-2 explains that the total amount of all existing debt being satisfied in the transaction that is used in the funds for borrower calculation is the sum of the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v), as applicable. However, in transactions subject to § 1026.37(h)(1)(iii)(A)(*1*), payoffs of other secured or unsecured debt that will be disclosed under § 1026.38(j)(1)(v) are factored into the adjustments and other credits calculation under §°1026.37(h)(1)(vii) on the Loan Estimate.

The Bureau is, however, revising current comment 38(j)(1)(v)-2 to add construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of other secured or unsecured debt, and principal reductions as examples of amounts that will not have a corresponding credit in the summary of the seller's transaction under § 1026.38(k)(1)(iv) and to

cross-reference to comment 38-4 for an explanation of how to disclose a principal reduction under § 1026.38(j)(1)(v). As discussed in the section-by-section analysis of § 1026.38 pertaining to comment 38-4 above, industry commenters requested additional clarity regarding where in the summaries of transactions table the principal reduction disclosure is to be made, since § 1026.38(j)(4)(i) contains the requirement to disclose costs that are not paid from closing funds but would otherwise be disclosed pursuant to § 1026.38(j) marked with the phrase "Paid Outside of Closing" or "P.O.C.," but does not provide a specific location for the principal reduction disclosure. The commenters suggested that the appropriate location within the summaries of transactions table is under § 1026.38(j)(1)(v). The Bureau intended for a principal reduction to be disclosed under § 1026.38(j)(1)(v) in the summaries of transactions table and is revising comment 38-4 to, among other things, specifically reference § 1026.38(j)(1)(v). As a result, the Bureau is including a corresponding amendment to comment 38(j)(1)(v)-2. Final comment 38(j)(1)(v)-2 cross-references comment 38-4 for an explanation of how to disclose a principal reduction under § 1026.38(j)(1)(v).

The Bureau is adding comment 38(j)(1)(v)-3 to permit creditors to include the proceeds of the subordinate financing applied to the first-lien transaction in the summaries of transactions table on the simultaneous subordinate financing Closing Disclosure. Commenters asked, in the context of the alternative disclosures, how creditors would show the proceeds being applied to the first-lien on the alternative disclosures. The commenters asserted that most creditors prefer that the simultaneous subordinate financing Loan Estimate and Closing Disclosure include a disclosure of the amount of loan proceeds that will be applied to the first-lien loan, and asked the Bureau to permit this common practice. In the proposal, the Bureau noted that the funds that are provided to the consumer from the proceeds of subordinate financing and that will be applied to

the first-lien transaction would not be included on the simultaneous subordinate financing Loan Estimate or Closing Disclosure. As a result, the cash to close amount disclosed under §§ 1026.37(h)(1)(viii) and 1026.38(i)(9) would have represented the loan proceeds as "cash out" to the borrower. The Bureau understands from the comments that a common industry practice may be instead to include the loan proceeds from the simultaneous subordinate financing as an adjustment on the Loan Estimate and Closing Disclosure for the simultaneous subordinate financing transaction, which is inconsistent with the Bureau's proposal. The Bureau is addressing these comments related to the alternative disclosures in the section-by-section analyses of §§ 1026.37(h)(2)(iii) and 1026.38(t)(5)(v), but also finds it appropriate to address these comments in the context of the standard disclosures because simultaneous subordinate financing may be disclosed using the standard disclosures.

The Bureau believes that consumers may benefit from allowing creditors to continue this apparently common practice. This practice may help consumers better understand the simultaneous subordinate financing transaction and its relation to the first-lien loan. It provides a way for the simultaneous subordinate financing Loan Estimate and Closing Disclosure to include a disclosure of the amount of proceeds that will be applied to the first-lien loan. Because, under this practice, the cash to close amount disclosed under §§ 1026.37(h)(1)(viii) and 1026.38(i)(9) would not include the subordinate loan proceeds, the cash to close amount may better represent to consumers the cash, if any, they will owe or receive from the subordinate-lien loan that will not be applied directly to the first-lien loan.

Therefore, the Bureau is adding new comment 38(j)(1)(v)-3 to permit creditors to include the proceeds of the subordinate financing applied to the first-lien transaction in the summaries of transactions table on the simultaneous subordinate financing Closing Disclosure. As explained

in the discussion of comment 38(j)(1)(v)-2 above, amounts that will be disclosed under § 1026.38(j)(1)(v) on the Closing Disclosure are factored into the Loan Estimate in one of two ways. In transactions subject to § 1026.37(h)(1)(iii)(A)(*2*) and (B), a creditor factors amounts that will be disclosed under § 1026.38(j)(1)(v) into the funds for borrower calculations under § 1026.37(h)(1)(v). Comment 37(h)(1)(v)-2 explains that the total amount of all existing debt being satisfied in the transaction that is used in the funds for borrower calculation is the sum of the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v), as applicable. However, in transactions subject to § 1026.37(h)(1)(iii)(A)(*1*), a creditor factors amounts that will be disclosed under § 1026.38(j)(1)(v) into the adjustments and other credits calculation under §°1026.37(h)(1)(vii). The Bureau is making related amendments in commentary to §§ 1026.37(h)(2)(iii) and 1026.38(t)(5)(vii)(B).

38(j)(2) Itemization of Amounts Already Paid by or on Behalf of Borrower

38(j)(2)(vi)

Section 1026.38(j)(2)(vi) provides for the disclosure of "Other Credits" and "Adjustments" in the summary of the borrower's transaction table. Comment 38(j)(2)(vi)-2 clarifies that any subordinate financing proceeds not otherwise disclosed under § 1026.38(j)(2)(iii) or (iv) must be disclosed under § 1026.38(j)(2)(vi). Comment 38(j)(2)(vi)-5 clarifies that under § 1026.38(j)(2)(vi), a credit must be disclosed for any money or other payments made by family members or third parties, not otherwise associated with the transaction, along with a description of the nature of the funds. The Bureau proposed to revise § 1026.38(j)(2)(vi) to explain what items should be disclosed under the heading "Adjustments." Amounts due from the seller to the consumer, under the purchase and sale agreement, would be

disclosed under the "Adjustments" heading. The Bureau proposed to revise comment 38(j)(2)(vi)-2 to clarify that subordinate financing proceeds are disclosed pursuant to § 1026.38(j)(2)(vi) on the first-lien transaction Closing Disclosure and to revise comment 38(j)(2)(vi)-5 to clarify that amounts provided in advance of the real estate closing to consumers by third parties, including family members, not otherwise associated with the transaction, are not required to be disclosed under § 1026.38(j)(2)(vi). The Bureau also proposed to add new comment 38(j)(2)(vi)-6 to provide an example of an amount that would be disclosed under the heading "Adjustments." Having received no comments on the proposed revision to § 1026.38(j)(2)(vi) or the proposal to add new comment 38(j)(2)(vi)-6, the Bureau is finalizing § 1026.38(j)(2)(vi) as proposed and finalizing new comment 38(j)(2)(vi)-6 as proposed with a revision that adds a cross-reference to § 1026.38(k)(2)(viii), which requires disclosure of a description and amount of any and all other obligations required to be paid by the seller at the real estate closing. For the reasons discussed below, the Bureau is adopting as proposed the amendments to comments 38(j)(2)(vi)-2 and -5.

A mortgage company supported the proposed amendments to comment 38(j)(2)(vi)-2 to clarify that the proceeds of simultaneous subordinate financing are disclosed on the first-lien Closing Disclosure. The commenter asserted that this, accompanied by other proposed revisions, will enable creditors to provide a more accurate cash to close amount to consumers. The Bureau concludes that this clarification is necessary for accurate disclosure on the first-lien Closing Disclosure, and is therefore adopting the revisions to comment 38(j)(2)(vi)-2 as proposed.

One compliance professional supported the proposed amendments to comment 38(j)(2)(vi)-5 to clarify that amounts provided in advance of the real estate closing to consumers by third parties, including family members, not otherwise associated with the transaction, are not

required to be disclosed under § 1026.38(j)(2)(vi). One industry commenter raised concerns about the proposed change because at the time of disclosure, it is typically not evident if the borrower will receive gift funds before or at consummation.

The Bureau is adopting the amendments to comment 38(j)(2)(vi)-5 as proposed. The Bureau does not believe that additional clarification is needed for a scenario in which the creditor does not know at the time disclosures are given whether a borrower will receive gift funds before or at consummation. The Bureau notes that current comment 19(f)(1)(i)-2 provides that creditors may estimate disclosures provided under § 1026.19(f)(1)(ii)(A) and (2)(ii) using the best information reasonably available when the actual term is unknown to the creditor at the time disclosures are made, consistent with § 1026.17(c)(2)(i).

38(j)(2)(xi)

Comment 38(j)(2)(xi)-1 clarifies that the amounts disclosed under § 1026.38(j)(2)(xi) are for other items not paid by the seller, such as utilities used by the seller, rent collected in advance by the seller from a tenant for a period extending beyond the closing date, and interest on loan assumptions. The Bureau is proposing to remove the example of rent collected in advance by the seller from a tenant for a period extending beyond the closing date from comment 38(j)(2)(xi)-1. Proposed comment 38(j)(2)(vi)-6 adds that example as an item to be disclosed under the heading "Adjustments." The Bureau did not receive comments regarding the proposed change to comment 38(j)(2)(xi)-1. For the reasons stated above the Bureau is finalizing as proposed comment 38(j)(2)(xi)-1.

38(j)(4) Items Paid Outside of Closing Funds

38(j)(4)(i)

Section 1026.38(j)(4)(i) requires that any charges not paid from closing funds but that otherwise are disclosed under § 1026.38(j) be marked as "Paid Outside of Closing" or "P.O.C." Comment 38(j)(4)(i)-1 explains that the disclosure must include a statement of the party making the payment, such as the consumer, seller, loan originator, real estate agent, or any other person and cites to an example on form H-25(D) of appendix H of part 1026. The Bureau proposed to add comment 38-4 which would have provided that when contractual or other legal obligations of the creditor, such as the requirements of a government loan program or the purchase criteria of an investor, prevent the creditor from refunding cash to the consumer as lender credits, a principal curtailment may be used to provide a refund under § 1026.19(f)(2)(v). The Bureau proposed to revise comment 38(j)(4)(i)-1 to provide a cross-reference to comment 38-4 for an explanation of how to disclose a principal curtailment to provide a refund under § 1026.19(f)(2)(v). The Bureau also proposed to clarify that "a statement of the party making the payment" means the disclosure must identify the party making the payment.

As discussed in more detail in the section-by-section analysis of § 1026.38 pertaining to comment 38-4 above, industry commenters requested that the Bureau permit the use of principal curtailments for situations other than when a creditor is providing a credit for a tolerance refund and requested additional clarity regarding where in the summaries of transactions table the principal curtailment disclosure is to be made, since § 1026.38(j)(4)(i) contains the requirement to disclose costs that are not paid from closing funds but would otherwise be disclosed pursuant to § 1026.38(j) marked with the phrase "Paid Outside of Closing" or "P.O.C.," but does not provide a specific location for the principal curtailment disclosure. In addition, an industry

group recommended that the Bureau use the phrase "principal reduction" instead of "principal curtailment," noting that consumers would be more familiar with the recommended phrase.

For the reasons discussed below, the Bureau is adopting as proposed the modifications to comment 38(j)(4)(i)-1, with additional revisions for conformity with final comment 38-4. The Bureau appreciates the suggestion to use the phrase "principal reduction" and is revising final comment 38(j)(4)(i)-1 accordingly. As discussed in the section-by-section analysis of § 1026.38 pertaining to comment 38-4 above, the Bureau sought to address the particular issue of how to disclose a principal reduction that is used to provide a tolerance refund, but did not intend to propose to limit the use of principal reductions to situations where creditors were required to provide a tolerance refund under § 1026.19(f)(2)(v). The Bureau is revising and restructuring proposed comment 38-4 to provide clarity on the disclosure of principal reductions that are and are not used to provide tolerance refunds. Final comment 38-4 discusses the requirement to mark a principal reduction with the phrase "Paid Outside of Closing," or the abbreviation "P.O.C." pursuant to § 1026.38(j)(4)(i) if it is not paid with closing funds. Therefore, the Bureau is amending comment 38(j)(4)(i)-1 to cross-reference to final comment 38-4 for an explanation of how to disclose a principal reduction that is not paid from closing funds. The Bureau also explains, in the section-by-section analysis of § 1026.38 pertaining to comment 38-4 above, that the Bureau intended for a principal reduction to be disclosed in the summaries of transactions table under § 1026.38(j)(1)(v). Final comment 38-4, among other things, specifically references § 1026.38(j)(1)(v) instead of § 1026.38(j)(4)(i) for this requirement.

38(k) Summary of Seller's Transaction

Comment 38(k)-1 explains that § 1026.38(k) does not apply in transactions where there is no seller, such as a refinance transaction. The Bureau proposed to add additional examples of

transactions for which § 1026.38(k) does not apply in revised comment 38(k)-1, such as loans with a construction purpose as defined in § 1026.37(a)(9)(iii) which also do not have a seller, or for simultaneous subordinate financing transactions if the first-lien Closing Disclosure records the entirety of the seller's transaction. The Bureau did not receive any comments on this specific proposal. The Bureau concludes that the additional examples will aid in compliance with the disclosure requirements and is therefore finalizing the proposed amendments to comment 38(k)-1 with additional revisions to specify that the example of simultaneous subordinate financing applies to simultaneous subordinate financing transactions with a purchase purpose as defined in § 1026.37(a)(9)(i).

38(k)(1) Itemization of Amounts Due to Seller

Section 1026.38(k)(1) requires a disclosure in the summaries of transactions table of the amounts due to the seller at consummation. Section 1026.38(k)(1)(ii) requires a disclosure of the amount of the contract sales price of the property being sold, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items, labeled "Sale Price of Property." The Bureau did not propose to amend § 1026.38(k)(1)(ii) or its commentary.

For the reasons discussed below, the Bureau is adding final comment 38(k)(1)-1 to explain what amounts are disclosed under § 1026.38(k)(1)(ii) for a simultaneous subordinate financing transaction if the first-lien Closing Disclosure does not record the entirety of the seller's transaction. As discussed in the section-by-section analysis of § 1026.38(k) above, § 1026.38(k) does not apply in a simultaneous subordinate financing purchase transaction as defined in § 1026.37(a)(9)(i) if the first-lien Closing Disclosure records the entirety of the seller's transaction. In addition, when the alternative tables are used, the table required to be

disclosed by § 1026.38(k) may be deleted pursuant to § 1026.38(t)(5)(vii)(C); the alternative tables may only be used for the disclosure of simultaneous subordinate financing if the first-lien Closing Disclosure records the entirety of the seller's transaction.

The Bureau expects that in most transactions with simultaneous subordinate financing for which the alternative tables are not used, the first-lien Closing Disclosure will also record the entirety of the seller's transaction, and therefore § 1026.38(k) will not apply to the simultaneous subordinate financing transaction. However, there may be circumstances in which the first-lien Closing Disclosure will not record the entirety of the seller's transaction, and therefore § 1026.38(k) will apply to the simultaneous subordinate financing transaction. Therefore, the Bureau is adding comment 38(k)(1)-1 to explain that if § 1026.38(k) applies to a simultaneous subordinate financing transaction because the first-lien Closing Disclosure does not record the entirety of the seller's transaction, § 1026.38(k) must be completed based only on the terms and conditions of the simultaneous subordinate financing transaction. Comment 38(k)(1)-1 explains that no contract sales price is disclosed under § 1026.38(k)(1)(ii) on the Closing Disclosure for the simultaneous subordinate financing. This is consistent with the amendment to comment 38(j)(1)(ii)-1 which explains that on the simultaneous subordinate financing Closing Disclosure, no contract sales price is disclosed in the summaries of transactions table for the borrower's transaction under § 1026.38(j)(1)(ii), and comment 38(j)-3 which provides that amounts disclosed under § 1026.38(j)(1)(ii) and (k)(1)(ii) are the same.

38(k)(2) Itemization of Amounts Due from Seller

Section 1026.38(k)(2)(vii) requires a disclosure in the summaries of transactions table, under the seller's transaction, of the total amount of money that the seller will provide at the real estate closing as a lump sum not otherwise itemized to pay for loan costs as determined by

§ 1026.38(f) and other costs as determined by § 1026.38(g), and any other obligations of the seller to be paid directly to the consumer, labeled "Seller Credit." The Bureau did not propose to amend § 1026.38(k)(2)(vii) or its commentary.

For the reasons discussed below, the Bureau is adding final comment 38(k)(2)(vii)-1. Final comment 38(k)(2)(vii)-1 explains that if a simultaneous subordinate financing transaction is disclosed using the alternative tables pursuant to § 1026.38(d)(2) and (e), the first-lien Closing Disclosure must include any contributions from the seller toward the simultaneous subordinate financing that are disclosed in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) on the simultaneous subordinate financing Closing Disclosure. This amendment enables the first-lien Closing Disclosure to record the entirety of the seller's transaction, which is a requirement of providing the alternative disclosures for simultaneous subordinate financing purchase transactions. Specifically, final comments 37(d)(2)-1, 37(h)(2)-1, 38(d)(2)-1, and 38(e)-1, taken together, permit creditors of simultaneous subordinate financing purchase transactions to use the alternative disclosures only if the first-lien Closing Disclosure will record the entirety of the seller's transaction.

As discussed more fully in the section-by-section analysis of § 1026.37(d)(2), in response to the proposals to permit the disclosure of simultaneous subordinate financing purchase transactions using the alternative tables, one commenter questioned which disclosures should be used when the optional alternative tables were initially used for the simultaneous subordinate financing, but a seller later agrees to contribute to the costs of the subordinate financing, making continued use of the alternative tables impermissible under the proposal. For the reasons discussed in the section-by-section analysis of § 1026.37(d)(2), the Bureau is directly addressing the commenter's concern by adding new comment 38(k)(2)(vii)-1, amending comments

38(d)(2)-1 and 38(j)-3, and amending proposed new comments 38(t)(5)(vii)(B)-1 and -2, to require the disclosure of the seller's contributions to the subordinate financing, if any, in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure and the summaries of transactions table on the first-lien Closing Disclosure, when the alternative disclosures are used for the simultaneous subordinate financing. As discussed in the section-by-section analysis of § 1026.38(t)(5)(vii), final comments 38(t)(5)(vii)(B)-1 and -2.iii explain that if a simultaneous subordinate financing transaction is disclosed using the alternative tables pursuant to § 1026.38(d)(2) and (e), any contributions from the seller toward the simultaneous subordinate financing must be disclosed in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure. Final comment 38(k)(2)(vii)-1 explains that if a simultaneous subordinate financing transaction is disclosed with the alternative tables pursuant to § 1026.38(d)(2) and (e), the first-lien Closing Disclosure must include, in the summaries of transactions table for the seller's transaction under § 1026.38(k)(2)(vii), any contributions from the seller toward the simultaneous subordinate financing that are disclosed in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) on the simultaneous subordinate financing Closing Disclosure. The result of these amendments, coupled with the amendments to comment 38(j)-3, is that the first-lien Closing Disclosure will be able to record the entirety of the seller's transaction.

For example, assume the alternative tables are provided for the simultaneous subordinate financing transaction pursuant to § 1026.38(d)(2) and (e) and the seller contributes $200.00 toward the closing costs of the simultaneous subordinate financing. The simultaneous subordinate financing Closing Disclosure must include the $200.00 contribution in the payoffs and payments table in accordance with § 1026.38(t)(5)(vii)(B). The first-lien Closing Disclosure

must include the $200.00 contribution in the summaries of transactions table for the seller's transaction under § 1026.38(k)(2)(vii), thereby recording the entirety of the seller's transaction on the first-lien Closing Disclosure. For a more detailed discussion of these new and revised comments, see the section-by-section analyses of § 1026.38(d)(2), (j), and (t)(5)(vii).

38(l) Loan Disclosures

38(l)(7) Escrow Account

Mortgage Insurance Premiums

The Bureau's Proposal

If an escrow account is or will be established, § 1026.38(l)(7)(i)(A)(*1*), (*2*), and (*4*) require certain disclosures based on the tax, insurance, and assessment amounts described in § 1026.37(c)(4)(ii). Section 1026.37(c)(4)(ii), in turn, includes the mortgage-related obligations identified in § 1026.43(b)(8). However, § 1026.37(c)(4)(ii) specifically excludes amounts for mortgage insurance identified in § 1026.4(b)(5) (because amounts for mortgage insurance are already disclosed in the projected payments table under § 1026.37(c)(2)(ii)). The Bureau proposed to amend § 1026.38(l)(7)(i) and comments 38(l)(7)(i)(A)(*2*)-1 and 38(l)(7)(i)(A)(*4*)-1 to permit disclosure of amounts for ongoing mortgage insurance premiums.

Comments Received

Several commenters, including creditors and vendors, supported the proposed amendments to § 1026.38(l)(7)(i) and associated commentary to permit disclosure of amounts for ongoing mortgage insurance premiums. Vendors stated that such amendments are necessary both for consumer understanding and for facilitating industry compliance. A creditor noted that, by permitting disclosure of amounts for ongoing mortgage insurance premiums, the proposed amendments to § 1026.38(l)(7)(i) and associated commentary are consistent with current

§ 1026.38(g)(3), which cross-references § 1026.37(g)(3) and requires disclosure of the amount to be paid into the escrow account for mortgage insurance premiums at consummation.

However, some industry commenters opposed the proposed amendments to § 1026.38(l)(7)(i) and associated commentary to permit disclosure of amounts for ongoing mortgage insurance premiums. Trade association commenters stated that such amendments regarding the disclosures on page 4 of the Closing Disclosure are inconsistent with the estimated escrow payment disclosed on page 1 of the Closing Disclosure, which excludes amounts for mortgage insurance. A trade association and a vendor asserted that, while various labels on page 4 of the Closing Disclosure use the phrase "property costs," mortgage insurance premiums are not a property cost and the Bureau should not finalize the proposed amendments without testing for potential consumer confusion.

A trade association requested that, if the Bureau finalizes the proposed amendments to permit disclosure of amounts for ongoing mortgage insurance premiums, such disclosure should include only mortgage insurance premiums that are included in the escrow account analysis prescribed under Regulation X, 12 CFR 1024.17. A vendor group requested clarification regarding escrow account disclosures and space limitations on page 4 of the Closing Disclosure form. Vendors also requested that the Bureau amend § 1026.38(l)(7)(i) to require disclosure of all amounts paid into an escrow account, regardless of whether the consumer is required to make such payment or, rather, opts to do so.

Regarding implementation costs, a vendor commented that the proposed amendments to permit disclosure of amounts for ongoing mortgage insurance premiums would require significant reprogramming. A vendor group noted that the amendments are consistent with informal guidance previously provided by the Bureau to some vendors but the amendments

would require substantial changes for others. The vendor group stated that the proposed amendments would eliminate industry uncertainty. Regarding an implementation period for the various amendments to § 1026.38(l)(7) and associated commentary, including new comments 38(l)(7)(i)(A)(*2*)-2 and 38(l)(7)(i)(A)(*5*)-1 discussed below, the vendor group stated that reprogramming could take up to nine months for some vendors and a creditor recommended a six-month implementation period.

The Final Rule

For the reasons discussed below, the Bureau is adopting § 1026.38(l)(7)(i) and comments 38(l)(7)(i)(A)(*2*)-1 and 38(l)(7)(i)(A)(*4*)-1 as proposed and, in part in response to commenters' concerns, is also adding new comments 38(l)(7)-1 and -2. After considering the commenter's concern that the amendments should align with Regulation X, 12 CFR 1024.17, and consistent with current comment 38(g)(3)-5, new comment 38(l)(7)-1 cross-references the definition of "escrow account" in 12 CFR 1024.17(b) to provide a description of an escrow account for purposes of the escrow account disclosure under § 1026.38(l)(7). After considering the commenter's concern regarding space limitations on page 4 of the Closing Disclosure form, and consistent with current comment 38(j)-2, new comment 38(l)(7)-2 cross-references § 1026.38(t)(5)(ix) and provides that additional pages may be attached to the Closing Disclosure to add lines, as necessary, to accommodate the complete listing of all items required to be shown on the Closing Disclosure under § 1026.38(l)(7), with a reference such as "See attached page for additional information" placed in the applicable section of the Closing Disclosure.

As to commenters' concerns regarding potential consumer confusion as a result of the amendments permitting disclosure of amounts for ongoing mortgage insurance premiums, the Bureau notes that such disclosure is consistent with current § 1026.38(l)(7)(i)(A)(*3*), which

cross-references current § 1026.38(g)(3) and requires disclosure of the amount to be paid into the escrow account for mortgage insurance premiums at consummation. Regarding commenters' concern that permitting disclosure of amounts for ongoing mortgage insurance premiums on page 4 of the Closing Disclosure is inconsistent with the estimated escrow payment disclosed on page 1 of the Closing Disclosure, the Bureau concludes that such disclosures are not inconsistent because the estimated escrow payment on page 1 is disclosed adjacent to the mortgage insurance premium. Regarding commenters' assertion that mortgage insurance premiums should not be labeled "property costs" without testing for potential consumer confusion, the Bureau notes that current § 1026.38(l)(7)(i) already requires certain disclosures, labeled "property costs," based on the amounts described in § 1026.37(c)(4)(ii). Section 1026.37(c)(4)(ii), in turn, cross-references the mortgage-related obligations identified in § 1026.43(b)(8) and includes, among other costs, premiums for credit life, accident, health, or loss-of-income insurance that are written in connection with a credit transaction if such premiums are required by the creditor. Similarly, the Bureau concludes it is appropriate to include mortgage insurance premiums as part of such "property costs" disclosures and additional consumer testing is not necessary in this instance. With respect to the comments requesting that the Bureau amend § 1026.38(l)(7)(i) to disclose amounts that a consumer optionally pays into an escrow account, the Bureau notes that, consistent with the model language on page 4 of the Closing Disclosure form and TILA section 129D(h)(2), (3), and (4), creditors may disclose amounts a consumer pays into an escrow account if consistent with the terms of the legal obligation between the creditor and consumer.

In response to comments regarding the effective date and implementation period, as discussed in part VI below, the rule will be effective 60 days from publication in the *Federal Register*, but there will be an optional compliance period in effect until October 1, 2018.

The First Year

The Bureau's Proposal

Section 1026.38(l)(7) provides for various disclosures based on payments during the first year after consummation. Specifically, § 1026.38(l)(7)(i)(A)(*4*) requires disclosure of the amount the consumer will be required to pay into the escrow account with each periodic payment during the first year after consummation. Section 1026.38(l)(7)(i)(A)(*1*) requires a disclosure, labeled "Escrowed Property Costs over Year 1," calculated as the amount disclosed under § 1026.38(l)(7)(i)(A)(*4*) multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation. Depending on the payment schedule dictated by the legal obligation, sometimes fewer than 12 periodic payments will be made to the escrow account during the first year after consummation—in which case creditors may comply with § 1026.38(l)(7)(i)(A)(*1*) and (*4*) by basing such disclosures on less than 12 periodic payments. Alternatively, § 1026.38(l)(7)(i)(A)(*5*) provides that a creditor may comply with § 1026.38(l)(7)(i)(A)(*1*) and (*4*) by basing the disclosures on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17. To clarify the alternative means by which creditors may comply with § 1026.38(l)(7)(i)(A)(*1*) and (*4*), the Bureau proposed to add new comment 38(l)(7)(i)(A)(*5*)-1.

Current § 1026.38(l)(7)(i)(A)(*2*) requires a disclosure of certain charges, labeled "Non-Escrowed Property Costs over Year 1," that the consumer is likely to pay during the first year after consummation but without using escrow account funds. The Bureau proposed to add new comment 38(l)(7)(i)(A)(*2*)-2 so that, if the creditor elects to make the disclosures required by § 1026.38(l)(7)(i)(A)(*1*) and (l)(7)(i)(A)(*4*) based on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17, the creditor may make the disclosures

required by § 1026.38(l)(7)(i)(A)(*2*) based on a 12-month period beginning with the borrower's initial payment date (rather than beginning with consummation).

Comments Received

Several commenters, including vendors, a creditor, a trade association, and an individual compliance consultant, generally supported proposed comments 38(l)(7)(i)(A)(*2*)-2 and 38(l)(7)(i)(A)(*5*)-1 to provide creditors with flexibility as to the means by which they may comply with § 1026.38(l)(7)(i)(A)(*1*), (*2*), and (*4*). However, several commenters, including creditors, trade associations, and a vendor, requested that the Bureau require such disclosures to be based on a 12-month period beginning with the borrower's initial payment date (and not permit creditors the alternative option of a 12-month period beginning with consummation). Another vendor did not specify a preference between either disclosure timeframe, but nonetheless requested that the Bureau adopt a single, mandatory timeframe, rather than allowing creditors flexibility to choose among the alternatives. A vendor, a creditor, and a trade association asserted that disclosing on a 12-month period beginning with the borrower's initial payment date is better for consumer understanding. The vendor also stated that allowing creditors to choose among alternative options could conflict with secondary market investors' preferences.

The Final Rule

For the reasons discussed below, the Bureau is adopting comments 38(l)(7)(i)(A)(*2*)-2 and 38(l)(7)(i)(A)(*5*)-1 as proposed. The Bureau concludes that allowing creditors the flexibility of choosing among alternative disclosure options will facilitate compliance. As to commenters' assertion that disclosing on a 12-month period beginning with the borrower's initial payment date is better for consumer understanding than a 12-month period beginning with consummation,

the Bureau notes that the model language on page 4 of the Closing Disclosure form simply uses the phrase "over Year 1" and the Bureau believes either option supports consumer understanding. The Bureau does not believe any benefits to disclosing on a 12-month period beginning with the borrower's initial payment date would warrant limiting flexibility for facilitating compliance here. Regarding commenters' concern that allowing creditors to choose among alternative options could conflict with secondary market investors' preferences, among the alternative options provided by comments 38(l)(7)(i)(A)(*2*)-2 and 38(l)(7)(i)(A)(*5*)-1, nothing in the rule prohibits a creditor from choosing the option that an investor prefers or requires.

In response to comments regarding the effective date and implementation period, as discussed in part VI below, the rule will be effective 60 days from publication in the *Federal Register*, but there will be an optional compliance period in effect until October 1, 2018.

38(l)(7)(i)

38(l)(7)(i)(B)

38(l)(7)(i)(B)(1)

If an escrow account will not be established, § 1026.38(l)(7)(i)(B)(*1*) requires disclosure of the estimated total amount, labeled "Property Costs over Year 1," that the consumer will pay directly for charges described in § 1026.37(c)(4)(ii) during the first year after consummation. As discussed above, § 1026.37(c)(4)(ii) specifically excludes amounts for mortgage insurance identified in § 1026.4(b)(5) (because amounts for mortgage insurance are already disclosed in the projected payments table under § 1026.37(c)(2)(ii)). The Bureau proposed to amend § 1026.38(l)(7)(i)(B)(*1*) and comment 38(l)(7)(i)(B)(*1*)-1 to permit disclosure of amounts for ongoing mortgage insurance premiums.

In addition to the comments received regarding § 1026.38(l)(7) and associated commentary discussed above, a vendor requested an additional revision to proposed § 1026.38(l)(7)(i)(B)(*1*) or its associated commentary that, similar to proposed 38(l)(7)(i)(A)(*2*)-2, would permit creditors to disclose based on a 12-month period beginning with the borrower's initial payment date (rather than beginning with consummation).

For the reasons discussed below, the Bureau is adopting § 1026.38(l)(7)(i)(B)(*1*) and comment 38(l)(7)(i)(B)(*1*)-1 as proposed and, in part in response to commenters' feedback, is also adding new comment 38(l)(7)(i)(B)(*1*)-2. Specifically, new comment 38(l)(7)(i)(B)(*1*)-2 provides creditors with an option to make the disclosures required by § 1026.38(l)(7)(i)(B)(*1*) based on a 12-month period beginning with the borrower's initial payment date or beginning with consummation. The Bureau concludes that allowing creditors the flexibility of choosing among alternative disclosure options is consistent with comment 38(l)(7)(i)(A)(*2*)-2, as finalized, and will facilitate compliance. Moreover, for the reasons discussed above, both as proposed and as finalized, § 1026.38(l)(7)(i)(B)(*1*) and comment 38(l)(7)(i)(B)(*1*)-1 permit disclosure of amounts for ongoing mortgage insurance premiums, which is consistent with current § 1026.38(l)(7)(i)(A)(*3*).

38(o) Loan Calculations

38(o)(1) Total of Payments

The Bureau's Proposal

TILA section 128(a)(5) and (8) requires a creditor to disclose the sum of the amount financed and the finance charge, using the term "Total of Payments," and a descriptive

explanation of that term.[89] In the TILA-RESPA Final Rule, to promote consumer understanding, the Bureau adopted a modified definition of total of payments that differs from the statutory definition under TILA section 128(a)(5). Section 1026.38(o)(1) defines the total of payments, for purposes of the Closing Disclosure, as the total the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled. The Bureau proposed to adopt tolerances for the total of payments that parallel the statutory tolerances for the finance charge and disclosures affected by the finance charge because, historically, the total of payments has been understood to be a disclosure affected by the finance charge and therefore subject to its tolerances. The Bureau also proposed conforming revisions to § 1026.23(g) and (h)(2) as discussed in the section-by-section analyses of those provisions above. For the reasons discussed below, the Bureau adopts the revisions to § 1026.38(o)(1) as proposed.

Comments Received

The Bureau received several comments from industry that were generally supportive of the proposal to adopt tolerances for the total of payments that parallel the statutory tolerances for the finance charge and disclosures affected by the finance charge. A number of creditors stated that they support the proposed change and believe that it would provide clarity to both consumers and creditors. Several trade groups similarly supported the addition of tolerances for the total of payments, with one stating that it believes the approach proposed will positively impact secondary market execution by affording investors comfort that minor inaccuracies do not raise liability concerns. One commenter stated that this proposed change by the Bureau

[89] 15 U.S.C. 1638(a)(5), (8). For transactions subject to § 1026.19(e) and (f), § 1026.38(o)(1) implements this disclosure requirement.

represented a good example of a flexible approach that balances consumer protection and accurate disclosure of loan terms and costs with the practical challenges faced by creditors and investors. A group of vendor commenters agreed that the addition of tolerances for the total of payments is a necessary and desirable change. One specific vendor commented that these clarifications would assist industry in complying with the rule, provide for more uniform data for transactions subject to the rule, and reduce legal risk for creditors and investors.

Among commenters that generally supported the proposal to adopt tolerances for the total of payments, some encouraged the Bureau to go further. Two trade groups requested that the Bureau increase the tolerance beyond $100. With respect to implementation, a number of industry commenters requested that the tolerances for the total of payments be effective immediately and, in some cases, commenters requested that the tolerances apply retroactively to the effective date of the TILA-RESPA Final Rule (October 3, 2015).

Commenters generally supported the proposal to adopt tolerances for the total of payments that parallel the statutory tolerances for the finance charge and disclosures affected by the finance charge. In response to those industry commenters who requested that the Bureau go further by adopting a tolerance greater than $100, the Bureau declines to do so. The Bureau believes that applying the same tolerances for accuracy of the disclosed finance charge and other disclosures affected by the disclosed finance charge to the total of payments for purposes of the Closing Disclosure promotes consistency with the tolerances in effect before the TILA-RESPA Final Rule. The Bureau has determined that the tolerances are narrow enough to prevent misleading disclosures or disclosures that circumvent the purposes of TILA and are thus appropriate pursuant to the Bureau's authority under TILA section 121(d) to adopt tolerances necessary to facilitate compliance with the statute. And with respect to commenters' request that

the new tolerance for the total of payments be effective immediately or retroactively, the Bureau similarly declines this request for the reasons discussed in part VI, below, regarding the rule's effective date.

The Bureau also received comments from industry that questioned the proposal to adopt tolerances for the total of payments. One trade group stated that there would be significant cost and a lengthy reprogramming process for compliance. Another trade group stated that the Bureau's proposal to extend a tolerance for the total of payments applies only to the extent that the finance charge is accurate and that, therefore, the Bureau should extend an additional tolerance to the total of payments for errors in loan costs when the finance charge is not correct. One industry commenter stated that the proposed amendment would be confusing and overly burdensome because it would expand the current finance charge tolerance to all components of the total of payments. One creditor stated that it considers the proposed tolerance limitations for the total of payments redundant and overlapping with the APR tolerance limitations and encouraged the Bureau to abandon the APR tolerance limitations if the proposed tolerances for the total of payments were adopted. An individual commenter opposed the proposal on the basis that finance charges are already subject to tolerance and adding non-finance charge loan costs to the tolerance test would increase creditor liability.

The existing finance charge tolerance extends to any disclosure affected by the finance charge, including the total of payments as long as a misdisclosure of the total of payments resulted from a misdisclosure of the finance charge. Conversely, under the current rule, a misdisclosure of the total of payments that does not result from a misdisclosure of the finance charge is not subject to the finance charge tolerances. Because the current rule does not provide for a tolerance for the total of payments, other than to the extent a total of payments

misdisclosure results from a misdisclosure of the finance charge, under the current rule, any misdisclosure of the total of payments that does not result from a misdisclosure of the finance charge could potentially subject a creditor to liability.

Those industry comments that did not support the proposal to adopt tolerances for the total of payments seemed to imply that the total of payments currently may vary by any amount and that therefore the proposal to adopt a tolerance for the total of payments would impose a new and undue restriction. To the contrary, however, the adoption of tolerances for the total of payments offers a new tolerance that applies to the components of the total of payments that were previously not permitted to vary by any amount, even if those components are not finance charges and therefore would not benefit from the existing finance charge tolerance. The adopted tolerances for the total of payments apply independently, whether the disclosed finance charge is accurate or not. And in neither the TILA-RESPA Final Rule nor the proposal did the Bureau make changes or propose to make changes that impact the APR tolerance.

Some industry commenters offered alternatives to the proposal to adopt tolerances for the total of payments. One creditor suggested that the Bureau either make clear that the new total of payments calculation is no longer tied to the finance charge and therefore not subject to tolerance; or revert to TILA's definition of the total of payments. Another creditor suggested that the Bureau clarify that the amount by which the total of payments is understated may be corrected when the finance charge understatement is made whole. One trade group suggested that when good faith tolerances under § 1026.19(e)(3)(i) and (ii) are met for components, including loan costs, of the total of payments that the new total of payments tolerance should also be satisfied.

None of those suggested alternatives would achieve the Bureau's goal of adopting tolerances for the total of payments necessary to facilitate compliance with TILA. In response to the first creditor's set of alternatives, although in the TILA-RESPA Final Rule the Bureau modified the total of payments calculation, it is still a disclosure affected by any finance charge in that certain loan costs may also be finance charges. Additionally, the Bureau did not propose to revise the definition of the total of payments in the proposal and continues to believe, as stated in the TILA-RESPA Final Rule, that the revised definition of the total of payments enhances consumer understanding.[90] The second creditor's suggestion does not recognize that the total of payments may be understated for reasons unrelated to the finance charge. And the final alternative offered does not distinguish between the § 1026.19(e)(3) good faith analysis adopted in the TILA-RESPA Final Rule and the separate and independent statutory tolerances afforded under TILA.

A few industry commenters sought clarification of issues related to the proposal to adopt tolerances for the total of payments. One trade group requested clarification as to whether the proposed tolerances for the total of payments change the existing finance charge tolerances. Two industry commenters expressed uncertainty about the remedy or cure required if the tolerance for the total of payments were exceeded and the interaction between the proposed tolerances for the total of payments and the existing tolerances for the finance charge and APR. One trade group specifically expressed concern that the proposed rule does not clearly state that when a violation occurs it can be cured with a reimbursement to the consumer. Other industry commenters requested information specifically about how to account for financed loan costs,

[90] *See* 78 FR 79730, 80038 (Dec. 31, 2013).

stating that including financed loan costs in the total of payments calculation would be redundant to the extent such loan costs are accounted for in the principal and interest payments.

To clarify, the new tolerances for the total of payments do not change the existing finance charge tolerances or those tolerances that apply to the APR. The tolerances for each of these disclosures operates independently as explained in new comment 38(o)-1. As to the question of the rule addressing how a violation may be cured, nothing in the TILA-RESPA Final Rule altered the remedies available to creditors for the correction of errors under TILA section 130(b). Creditors may employ the statutory provisions for correction of errors with respect to the total of payments to the same extent today as they could prior to the adoption of the TILA-RESPA Final Rule and to the same extent as they will be able to after the effective date of this final rule. Section 1026.38(o)(1) likewise remains that same as to the calculation of the total of payments: the total the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs as scheduled through the end of the loan term. The rule does not offer an alternative calculation if the consumer elects to finance loan costs. The Bureau declines to adopt commenters' request that the Bureau amend the total of payments calculation in the event that loan costs are financed because the Bureau did not propose to change and did not request comment on amending the underlying calculation for the total of payments.

The Bureau received comments from consumer groups opposing the proposal to adopt tolerances for the total of payments that parallel the statutory tolerances for the finance charge and disclosures affected by the finance charge. The consumer groups stated that the proposal would not promote consistency or avoid misleading disclosures and that it would dramatically change the tolerance rules by applying them to errors in the total of payments that are not caused by an understatement of the finance charge. The consumer groups stated that the total of

payments calculation is straightforward for creditors and that errors should be rare in light of computer programming. The commenters stated that creditors wishing to make the total of payments appear smaller could intentionally and improperly disclose loan costs under the other costs table on the Closing Disclosure or incorrectly amortize the principal. Additionally, the commenters urged the Bureau to require creditors to use an addendum for variable rate loans to disclose the projected actual monthly payment at each change listed under the projected payments table, not just the maximum and minimum, and to require creditors to disclose the total of each component of the total of payments in an addendum.

The Bureau considered the comments submitted by the consumer groups. The commenters expressed concern that a creditor could intentionally make the total of payments appear smaller by improperly disclosing loan costs under the other costs table on the Closing Disclosure or by incorrectly amortizing the principal. However, the adoption of tolerances for the total of payments does not give creditors license to violate the rule by, for example, improperly disclosing costs or incorrectly calculating required disclosures, nor does it permit creditors to overstate intentionally the total of payments by "padding" fees. Additionally, the Bureau declines to require an addendum for variable rate loans to disclose the projected actual monthly payment at each change listed under the projected payments table or to disclose the total of each component of the total of payments, as requiring such an addendum would impose additional regulatory implementation costs and the Bureau believes that the disclosures required by the TILA-RESPA Rule already promote the meaningful disclosure of credit terms and informed use of credit.

The Final Rule

For the reasons discussed in this section-by-section analysis, the Bureau adopts the revisions to § 1026.38(o)(1) as proposed. Specifically, the Bureau revises § 1026.38(o)(1) to provide that the disclosed total of payments shall be treated as accurate if the amount disclosed as the total of payments: (i) is understated by no more than $100; or (ii) is greater than the amount required to be disclosed. The Bureau also finalizes conforming revisions to § 1026.23(g) and (h)(2) as discussed in the section-by-section analyses of each of those provisions above.

As the Bureau explained in the proposal, TILA section 128(a)(3) and (8) requires a creditor to disclose the finance charge, using that term.[91] As amended by Congress in 1995,[92] TILA section 106(f)(1) sets forth the tolerances for accuracy of the finance charge and other disclosures affected by any finance charge and states that, in connection with credit transactions (not under an open end credit plan) that are secured by real property or a dwelling, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate, except for purposes of rescission under TILA section 125, if the amount disclosed as the finance charge (A) does not vary from the actual finance charge by more than $100; or (B) is greater than the amount required to be disclosed.[93] For transactions subject to § 1026.19(e) and (f), § 1026.38(o)(2) implements the finance charge disclosure requirement in TILA section 128(a)(3) and the statutory tolerance provision for the finance charge in TILA section 106(f)(1).

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[91] 15 U.S.C. 1638(a)(3).
[92] Truth in Lending Act Amendments of 1995, Public Law 104–29, § 3(a), 109 Stat 271 (1995).
[93] 15 U.S.C. 1605(f)(1). As discussed in the section-by-section analysis of § 1026.23(g), 15 U.S.C. 1605(f)(2) sets forth specific treatment for the disclosure of the finance charge and other disclosures affected by any finance charge for purposes of rescission under TILA section 125.

In the TILA-RESPA Final Rule, the Bureau modified the requirement under TILA section 128(a)(5) to disclose the total of payments as the sum of the amount financed and the finance charge to require that a creditor instead disclose the total of payments on the Closing Disclosure as the sum of principal, interest, mortgage insurance, and loan costs. Accordingly, § 1026.38(o)(1) requires the disclosure of the "Total of Payments," using that term and expressed as a dollar amount, and a statement that the disclosure is the total the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled. This modification of the total of payments calculation for purposes of the Closing Disclosure results in loan costs that are not components of the finance charge being included in the total of payments. In addition, the modification of the total of payments calculation also results in components of the finance charge being excluded from the total of payments if such components are not interest, mortgage insurance, loan costs, or included in the principal amount of the loan. This in turn may have introduced ambiguity as to whether the total of payments as modified by the Bureau for purposes of the Closing Disclosure is a disclosure affected by the disclosed finance charge and therefore subject to the same tolerances. In modifying the total of payments calculation in the TILA-RESPA Final Rule, the Bureau did not intend to alter the tolerances for accuracy applicable to the total of payments. To apply the same tolerances for accuracy of the disclosed finance charge and other disclosures affected by the disclosed finance charge unambiguously to the total of payments on the Closing Disclosure, the Bureau proposed to revise § 1026.38(o)(1).

The Bureau modified the total of payments in the TILA-RESPA Final Rule because it understood that this disclosure had been unclear to consumers historically. As the Bureau explained in the 2012 TILA-RESPA Proposal and TILA-RESPA Final Rule, a Board-HUD Joint

Report analyzing the TILA and RESPA disclosures recommended changes to several disclosures, including the total of payments.[94] The Board's consumer testing found that many consumers did not understand the total of payments and that, even when consumers understood its meaning, most did not consider it important in their decision-making process.[95]

To enhance consumer understanding, in the TILA-RESPA Final Rule, the Bureau modified the requirement of TILA section 128(a)(5) that the total of payments disclose the sum of the amount financed and the finance charge in two ways.[96] First, the Bureau adopted § 1026.37(l)(1)(i) to require that a creditor disclose on the Loan Estimate the total payments over five years, rather than the life of the loan, using the label "In 5 Years."[97] Second, the Bureau adopted § 1026.38(o)(1) to require that a creditor disclose on the Closing Disclosure the total of payments to reflect the total the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.[98] Including mortgage insurance and loan costs rather than the finance charge in the "In 5 Years" and the total of payments disclosures was intended to enhance consumer understanding of mortgage transactions and allow consumers to compare loans more easily and usefully. Loan costs are those costs disclosed under § 1026.38(f) and include origination charges as well as the costs of services required by the creditor but provided by persons other than the creditor, including services that the borrower did

[94] 77 FR 51116, 51124 (Aug. 23, 2012), 78 FR 79730, 79976 (Dec. 31, 2013).
[95] 77 FR 51116, 51222 (Aug. 23, 2012), 78 FR 79730, 79976 (Dec. 31, 2013).
[96] The Bureau modified the requirement of TILA section 128(a)(5) pursuant to its authority under TILA section 105(a) (15 U.S.C. 1604(a)), Dodd-Frank Act 1032(a) (12 U.S.C. 5532(a)), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) (15 U.S.C. 1601 note). 78 FR 79730, 80038 (Dec. 31, 2013).
[97] 77 FR 51116, 51223 (Aug. 23, 2012), 78 FR 79730, 79977 (Dec. 31, 2013).
[98] 78 FR 79730, 80038 (Dec. 31, 2013).

and did not shop for.[99] These services commonly include fees for appraisal, credit reporting, survey, title search, and lender's title insurance. Under § 1026.4, these services may or may not be included in the finance charge, and whether they are included in the finance charge is a fact-specific determination.[100]

The Bureau believes that applying the same tolerances for accuracy of the disclosed finance charge and other disclosures affected by the disclosed finance charge to the total of payments for purposes of the Closing Disclosure is appropriate. The TILA-RESPA Final Rule adopted its own good faith analysis and requires a creditor to refund any excess paid by the consumer, when necessary, to promote accurate disclosure. Additionally, since Congress amended TILA in 1995, the tolerances for accuracy of the finance charge have been understood to apply to the total of payments. Congress was clear that, to the extent other disclosures with statutory liability were affected by a misdisclosure of the finance charge within the tolerance limits, the same protections should apply. At the time Congress adopted the finance charge tolerance rules, assuming that no errors or clerical mistakes were made in the total of payments calculation, the total of payments was by definition determined by the finance charge calculation. Congress did not alter the statutory tolerances in adopting the Dodd-Frank Act and in requiring the Bureau to integrate the TILA and RESPA disclosures. Therefore, to promote consistency with the tolerances in effect before the TILA-RESPA Final Rule, the Bureau now applies the same tolerances for accuracy of the finance charge to the total of payments for purposes of the Closing Disclosure.

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[99] *See* 78 FR 79730, 80010 (Dec. 31, 2013).
[100] Finance charge is defined in TILA section 106(a) (15 U.S.C. 1605(a)). Section 1026.4 implements this definition, provides examples, and excludes certain charges from the finance charge.

The Bureau understands that clarity regarding the applicable tolerances for accuracy of the total of payments is especially important because of the statutory consequences of misdisclosure of the total of payments. The total of payments is one of the disclosures that may give rise to civil liability as set forth in TILA section 130 for a creditor's failure to comply, including actual damages, statutory damages (individual and class action), costs, and attorney's fees.[101] The total of payments is also one of the even more limited set of material disclosures where a misdisclosure can give rise to TILA's extended right of rescission for certain transactions as set forth in TILA section 125, which generally is available for three years after the date of consummation of the transaction, serves to void the creditor's security interest in the property, and eliminates the consumer's obligation to pay any finance charge (even if accrued) or any other costs incident to the loan.[102] Nothing in the TILA-RESPA Final Rule altered this defined statutory liability for the total of payments or any other disclosure.

The Bureau also adopts as proposed new comment 38(o)-1 to provide two examples illustrating the interaction of the finance charge and total of payments accuracy requirements for each transaction subject to § 1026.19(e) and (f). A number of industry commenters stated that they support the application of tolerances for the total of payments that operate independently from the finance charge tolerances.

Further, the Bureau adopts the revisions to comment 38(o)(1)-1 substantially as proposed, but with changes to clarify that the total of payments calculation excludes any amount of

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[101] 15 U.S.C. 1640(a).

[102] 15 U.S.C. 1635. Section 1026.23 implements TILA's rescission provision and defines material disclosures to mean the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total of payments, the payment schedule, and the disclosures and limitations referred to in §§ 1026.32(c) and (d) and 1026.43(g). *See* § 1026.23(a)(3)(ii).

principal, interest, mortgage insurance, or loan costs that is not paid by the consumer and offset by another party through a specific credit. As proposed, the revisions to comment 38(o)(1)-1 would have explained that the total of payments is calculated in the same manner as the "In 5 Years" disclosure under § 1026.37(l)(1)(i), except that the disclosed amount reflects the total payments through the end of the loan term and excludes charges for loan costs disclosed under § 1026.38(f) that are designated on the Closing Disclosure as paid by seller or paid by others. However, some industry commenters stated that an agreement between the consumer and the seller or other party to offset a cost through a specific credit does not only apply to loan costs, but may also be used to offset other components of the total of payments including, for example, prepaid interest. Therefore, the Bureau revises comment 38(o)(1)-1 to clarify that the total of payments calculation on the Closing Disclosure excludes any component of the total of payments that is not paid by the consumer and offset by the seller or other party through a specific credit.

A seller or other party, such as the creditor, may agree to offset payments of principal, interest, mortgage insurance, or loan costs, whether in whole or in part, through a specific credit, for example through a specific seller or lender credit. The revision to the comment clarifies that, because these amounts are not paid by the consumer, they are excluded from the total of payments calculation. The revision to comment 38(o)(1)-1 references only amounts offset by specific credits as being excluded from the total of payments calculation. A few industry commenters stated that the Bureau should permit creditors to exclude from the total of payments any credit offered by the seller or other party, including general credits. Non-specific credits, however, are generalized payments to the consumer that do not represent an agreement to pay for a particular fee or amount and therefore do not serve to offset payments of principal, interest, mortgage insurance, or loans costs for purposes of the total of payments calculation.

One industry commenter stated that the Bureau should also permit creditors to calculate the "In 5 Years" disclosure to reflect any amount of principal, interest, mortgage insurance, or loan costs that is offset by the seller or other party. However, as the Bureau explained in the proposal, the Bureau believes that the distinct treatment of specific credits from a seller or other party between the "In 5 Years" disclosure and the total of payments disclosure is appropriate given the difference between the information available to the creditor when it provides the Loan Estimate and when it provides the Closing Disclosure. At the Loan Estimate stage, a creditor may not know whether a specific credit will be applied to offset a component of the total of payments, whether in whole or in part. Further, unlike the Closing Disclosure, the Loan Estimate does not allow for the itemized disclosure of amounts paid by the seller or others.

Legal Authority

The Bureau revises § 1026.38(o)(1) and its commentary, and makes conforming revisions to § 1026.23(g) and (h)(2), to apply the same tolerances for accuracy of the disclosed finance charge and other disclosures affected by the disclosed finance charge to the total of payments for each transaction subject to § 1026.19(e) and (f) pursuant to its authority to set tolerances for numerical disclosures under TILA section 121(d).[103] Section 121(d) of TILA generally authorizes the Bureau to adopt tolerances necessary to facilitate compliance with the statute, provided such tolerances are narrow enough to prevent misleading disclosures or disclosures that circumvent the purposes of the statute. The Bureau has considered the purposes for which it may exercise its authority under TILA section 121(d). As noted above, the Bureau has concluded that the tolerances for the total of payments promote consistency with the tolerances in effect before

[103] 15 U.S.C. 1631(d).

the TILA-RESPA Final Rule. The Bureau therefore believes that the tolerances facilitate compliance with the statute. Additionally, the Bureau believes that the tolerances in revised § 1026.38(o)(1), which are identical to the finance charge tolerances provided by Congress in TILA section 106(f), are sufficiently narrow to prevent these tolerances from resulting in misleading disclosures or disclosures that circumvent the purposes of TILA.

38(t) Form of Disclosures

38(t)(3) Form

The Bureau proposed to make technical amendments to comment 38(t)(3)-1 to insert two missing words and make a non-substantive stylistic edit. Specifically, in the first sentence of the comment, the Bureau proposed to add the words "is not" and delete the prefix "non" that precedes the word "federally." The Bureau noted that the proposed technical amendment would not alter the substance of comment 38(t)(3)-1. The Bureau did not receive comments on the proposed changes and is finalizing comment 38(t)(3)-1 as proposed.

38(t)(4) Rounding

38(t)(4)(ii) Percentages

Section 1026.38(t)(4)(ii) provides rounding rules for the percentage amounts disclosed under § 1026.38(b), (f)(1), (n), (o)(4), and (o)(5). As explained in the TILA-RESPA Final Rule the Bureau required rounding for certain amounts to reduce information overload, aid in consumer understanding of the transaction, prevent misconceptions regarding the accuracy of certain estimated amounts (*e.g.*, estimated property costs over the life of the loan), and ensure a meaningful disclosure of credit terms. Section 1026.38(t)(4)(ii) provides that the percentage amounts disclosed for loan terms, origination charges, the adjustable interest rate table, and the TIP shall not be rounded and shall be disclosed up to two or three decimal places and the

percentage amount required to be disclosed for the annual percentage rate shall not be rounded and shall be disclosed up to three decimal places. If the amount is a whole number, then the amount disclosed shall be truncated at the decimal point.

In its proposal the Bureau noted that it understands that there is uncertainty about the rounding requirements under § 1026.38(t)(4)(ii). In an effort to eschew uncertainty about rounding requirements under § 1026.38(t)(4)(ii) the Bureau proposed to revise § 1026.38(t)(4)(ii) to simplify the rounding requirements for the percentages disclosed pursuant to the requirements of § 1026.38(t)(4)(ii). Proposed § 1026.38(t)(4)(ii) provided that the percentage amounts disclosed under § 1026.38(b), (f)(1), (n), (o)(4), and (o)(5) must be disclosed by rounding the exact amounts to three decimal places and then dropping any trailing zeros to the right of the decimal point. The Bureau did not receive comment regarding the proposed revision to § 1026.38(t)(4)(ii). The Bureau is finalizing the revisions to § 1026.38(t)(4)(ii) as proposed.

38(t)(5) Exceptions

38(t)(5)(v) Separation of Consumer and Seller Information

The Bureau's Proposal

Regulation Z requires the use of the Closing Disclosure by the creditor to provide the required disclosures concerning the transaction to the consumer under § 1026.19(f)(1)(i) and requires the settlement agent to provide a copy of the Closing Disclosure to the seller under § 1026.19(f)(4)(i). Under § 1026.38(t)(5)(vi), the creditor or settlement agent is permitted to provide a separate Closing Disclosure to the seller that contains limited consumer information. The settlement agent must provide to the seller either a copy of the Closing Disclosure or a permissible separate Closing Disclosure, under § 1026.19(f)(4)(iv). The Bureau proposed to add comment 38(t)(5)(v)-1 to clarify that, at its discretion, the creditor may make modifications to

the Closing Disclosure form to accommodate the provision of separate Closing Disclosure forms to the consumer and the seller and the three methods by which a creditor can separate such information. The Bureau also proposed to add comments 38(t)(5)(v)-2 and -3 to provide examples where the creditor may choose to provide separate Closing Disclosure forms to the consumer and seller.

The preamble to the proposal also discussed the existing requirements of the Gramm-Leach-Bliley Act (GLBA) and Regulation P, which generally provide that a financial institution (such as a creditor or settlement agent) may not disclose its customer's nonpublic personal information to a nonaffiliated third party without providing notice to the customer of such information sharing and an opportunity to opt-out of such sharing. The Bureau noted that there are several exceptions to these notice and opt-out requirements.[104]

Comments Received

The Bureau received comments from settlement agents, real estate agents, GSEs, title insurers and title trade associations, credit unions, a mortgage industry consultant, settlement services provider trade associations, a credit union trade association, a state bankers association, a group of mortgage software vendors, creditors, and other industry associations. Commenters generally supported the proposed comments 38(t)(5)(v)-1, -2, and -3; however, several commenters requested various clarifications.

One commenter requested that the Bureau cross-reference the exact regulatory provisions expressly permitted to be left blank under § 1026.38(t)(5)(v)(A), (B), and (C). The commenter stated that as proposed, the comment refers to the "applicable disclosure," which may be

[104] 81 FR 54317, 54356 (Aug. 15, 2016).

confusing or interpreted in unintended ways. The commenter further stated that the Bureau should restate the exact regulatory provisions or state the names of the part of form H-25 that may be left blank. Another commenter stated that the Bureau lacked the authority to permit revisions to a consumer-only form since no model of such form has been published in appendix H of Regulation Z.

One commenter noted that the Bureau had a misstatement in its proposal. The Bureau stated that the settlement agent must provide to the seller either a copy of the Closing Disclosure or a permissible separate Closing Disclosure, under § 1026.19(f)(4)(iv). The commenter noted that the correct cite for this statement should have been § 1026.19(f)(4)(i).

One commenter requested clarification of the Bureau's use of the term "omit" in the proposal. Section 1026.38(t)(5)(v) permits creditors to modify the Closing Disclosure by omitting certain information concerning the seller or consumer on the form provided to the other party. The commenter stated that the proposed use of the word "omit" could be interpreted to mean that the inapplicable tables and labels can be deleted from form H-25. The commenter further stated that this interpretation would conflict with the regulatory text of § 1026.38(t)(5)(v), which authorizes information to be left "blank" on the separate Closing Disclosures but does not expressly permit creditors or settlement agents to "omit" or "delete" information from form H-25. The commenter further noted that § 1026.38(t)(5)(vi) expressly allows information to be "deleted" on a modified version of the Closing Disclosure provided to the seller or a third party. The commenter requested clarification as to whether the Bureau intended to propose that the regulatory text in § 1026.38(t)(5)(v) would authorize the deletion of inapplicable tables and labels on separate Closing Disclosures. The commenter stated that the authority to delete inapplicable tables and labels on a separate Closing Disclosure provided to the consumer would

complicate compliance and constitute a new version of the Closing Disclosure that currently is not included in appendix H of Regulation Z.

Another commenter noted that manually omitting or modifying sections of the Closing Disclosure from a systems programming perspective is challenging and will likely lead to an increase in errors. A different commenter stated that the Bureau should clarify that the seller's closing costs under § 1026.38(f) and (g) cannot be left blank on the Closing Disclosure provided to the consumer because § 1026.38(t)(5)(v)(B) does not provide such authority. Some commenters sought more clarity on the interplay between State privacy laws and contractual provisions and proposed comments 38(t)(5)(v)-1, -2, and -3.

The Bureau also received many comments related to the proposal's preamble discussion of the existing requirements of the GLBA and Regulation P. The Bureau received a number of observations on the changes in consumer information included on the Closing Disclosure compared to what was previously on the HUD-1 settlement statement. Many commenters noted that the real estate contract sets forth the terms of the purchase-sale agreement and may also address sharing of the Closing Disclosure, either specifically or generally via contract terms related to the delivery of information.

Commenters generally requested additional clarity on sharing a combined or separate Closing Disclosure with third parties, including requests for the Bureau to provide clearer guidance, or frequently asked questions, concerning what customer information a creditor may share with a settlement agent, a real estate agent, or other parties to a transaction. Some also requested changes to Regulation P and Regulation Z to require or expressly permit creditors and settlement agents to provide Closing Disclosures to real estate agents without providing notice to the customer of such information sharing and an opportunity to opt-out of such sharing. Other

commenters suggested that the Bureau create a list of third parties with whom creditors are "affirmatively permitted" to share consumer and seller information, such as the Closing Disclosure.

One commenter suggested that the Bureau's preamble discussion applies only to the provision of the consumer's Closing Disclosure to the borrower's agent or broker and to the provision of the seller's Closing Disclosure to the seller's agent or broker. This commenter also noted that, unless a different arrangement is established, all real estate agents in a transaction typically represent the seller and not the buyer. Real estate agent commenters stated that they should receive a copy of both the seller's and consumer's Closing Disclosures when separate Closing Disclosures are provided, regardless of whether the real estate agent is an agent of the other party. These commenters stated that such sharing should be required for several reasons: to inform their clients, imposed by a fiduciary relationship or a contractual obligation; to be used as an accounting tool for the real estate brokerage for which the real estate agent is associated; to find mistakes in the financial terms of the real estate transaction or on the Closing Disclosure; to assist non-English speakers; or to provide accurate transaction data to be included in multiple listing services or shared with appraisers. GSEs commented that it is important for creditors, and their successors and assigns, to see the seller's Closing Disclosure to ensure compliance with investor guidelines and the identification of potential fraudulent transactions.

Many commenters mentioned that the easiest, simplest, and safest way to handle issues concerning the sharing of the Closing Disclosure with third parties would be for creditors, settlement agents, real estate agents and others to obtain written consent to the sharing from consumers and sellers. Some commenters stated that, to help alleviate secondary market concerns, it would be helpful for the Bureau to affirmatively state that the sharing of the Closing

Disclosure is permissible under GLBA with the consent of the consumer or seller. One commenter noted that for creditors that currently utilize the consent method for the sharing of forms, and who have a proprietary loan origination system rather than a system from a third party vendor, the associated reprogramming expense could be avoided if the Bureau indicated that the written consent method was acceptable. Further, several commenters requested that the Bureau provide guidance on the type of authorizations it would view as sufficient, or a model form, to be able to provide the disclosures. One commenter noted that because of the legal risk in sharing Loan Estimates and Closing Disclosures, creditors and settlement agents are asking consumers to sign separate written authorization forms to obtain the consent of the consumer to share these disclosures with third parties, including real estate agents, through the closing or settlement of the transaction, pursuant to GLBA. They stated that greater clarity regarding the ability to share Loan Estimates and Closing Disclosures pursuant to GLBA sections 502(e)(1) and 502(e)(8) may reduce the utilization of such separate authorization forms, and better avoid information overload for consumers and enable them to focus on the important information in their disclosures regarding their loan terms and costs. Some commenters stated that it would be beneficial to the industry if the Bureau provided further clarification in the rule or commentary that the exception under GLBA section 502(e)(8) applies to the sharing of the seller's closing cost information under § 1026.38(f) and (g) by the settlement agent with the creditor, and to the settlement agent's provision to the creditor of a copy of the separate seller's Closing Disclosure pursuant to § 1026.19(f)(4).

Though not addressed in the proposal or preamble discussion, some commenters discussed issues of lender and settlement agent liability, and requested Bureau guidance. One commenter stated that it would be beneficial if the Bureau provided clarification regarding the

administrative liability of settlement agents that provide the Closing Disclosure to the consumer pursuant to § 1026.19(f)(1)(v), including whether settlement agents would be liable for noncompliant actions that were required by creditors. Some commenters noted that many creditors are attempting to shift liability to settlement agents in contracts and in loan closing instructions. One commenter stated that liability for the Closing Disclosure is unclear because under § 1026.19(f)(4) the settlement agent appears to be responsible for the Closing Disclosure provided to the seller, including liability for its accuracy; however, proposed comments 38(t)(5)(v)-1 and -3 appear to place this responsibility on the creditor.

The Final Rule

Since commenters generally supported the proposed additional provisions, the Bureau is adopting comments 38(t)(5)(v)-1 and -2 and comment 38(t)(5)(vi)-1 as proposed. The Bureau is adopting comment 38(t)(5)(v)-3 with minor modifications clarifying the circumstances in which a creditor may be providing a Closing Disclosure to a seller. In response to the commenter requesting that the Bureau cross-reference the exact regulatory provisions expressly permitted to be left blank under § 1026.38(t)(5)(v)(A), (B), and (C), the Bureau believes that the additions to comments 38(t)(5)(v)-1, -2, and -3, and comment 38(t)(5)(vi)-1 are adequately specific and should allow creditors sufficient flexibility to modify the Closing Disclosure form for the consumer and the seller in a way that facilitates the transaction.

In response to commenters' questions regarding the omission of inapplicable tables and labels when creating separate forms for consumers and sellers, the Bureau notes that the omission of a table or label from the consumer-only Closing Disclosure does not materially differ from reproducing the applicable table and labels without disclosing any numerical values. In either case, the disclosures required under § 1026.38 are still made, just to the seller, not to the

consumer. Accordingly, comment 38(t)(5)(v)-1 permits the creditor to leave blank or omit the applicable tables and labels on the consumer-only Closing Disclosure.

In response to the commenter who stated that the Bureau should clarify that the seller's closing costs under § 1026.38(f) and (g) cannot be left blank on the Closing Disclosure provided to the consumer because § 1026.38(t)(5)(v)(B) does not provide such authority, the Bureau notes that certain information about the seller's transaction is required by § 1026.38 because such information is necessary to comply with TILA section 128(a)(17).[105] The Bureau believes TILA section 128(a)(17) requires disclosure of information about the seller's transaction. In addition RESPA section 4(a) requires that the RESPA settlement statement itemize all charges imposed upon the seller in connection with the settlement.[106]

In response to commenters who raised questions about the interplay between State privacy laws and contractual provisions, and proposed comments 38(t)(5)(v)-1, -2, and -3, the Bureau notes that the comments as proposed described three different methods by which creditors may separate a consumer's information from a seller's information. In some instances, State law or contractual provisions may bar a creditor from disclosing a consumer's information to parties other than the consumer or bar a creditor from disclosing a seller's information to parties other than the seller. The comments as proposed provided options creditors could use to separate information to comply with these requirements or to comport with a creditor's decision to separate such information, while remaining in compliance with § 1026.38(t) requirements as

[105] In the case of a residential mortgage loan, the aggregate amount of settlement charges for all settlement services provided in connection with the loan, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of funds in connection with the loan, and the aggregate amount of other fees or required payments in connection with the loan. TILA Section 128(a)(17), 15 U.S.C 1638.
[106] 78 FR 79730, 80038 (Dec. 31, 2013).

to the form of disclosures. The Bureau notes that one commenter read the language of § 1026.38(t)(5)(v)-1 as proposed as potentially granting a creditor a Federal protection to make modifications to the form and provide the modified form to other parties, notwithstanding State law saying no other party has a right to those forms. However, the commenter provided no explanation for the proposition that a provision permitting separation of information is properly viewed as in conflict with a State law limiting or barring disclosure of such information, nor did the commenter cite to a specific State law. The Bureau believes that comments 38(t)(5)(v)-1, -2, and -3 as finalized could facilitate creditors' compliance with State privacy laws by ensuring that creditors can separate consumer and seller information while remaining in compliance with Regulation Z requirements as to the form of disclosures.

One commenter highlighted as incorrect the following sentence in the Bureau's proposal, "the settlement agent must provide to the *seller* either a copy of the Closing Disclosure or a permissible separate Closing Disclosure, under § 1026.19(f)(4)(iv)," (emphasis added). The sentence in the proposal was a misstatement and should have stated that the settlement agent must provide to the *creditor* either a copy of the Closing Disclosure or a permissible separate Closing Disclosure, under § 1026.19(f)(4)(iv)*, if the creditor is not the settlement agent*.[107]

As discussed in the preamble to the proposal, there are several exceptions to the GLBA's general prohibition on a financial institution's disclosure of its customer's nonpublic personal information to a nonaffiliated third party without providing notice to the customer of such information sharing and an opportunity to opt-out of such sharing. For example, GLBA section 502(e)(8) provides an exception that applies if a financial institution shares its customer's non-

[107] 81 FR 54317, 54355 (Aug. 15, 2016).

public personal information to comply with Federal, State, or local laws, rules and other applicable legal requirements. Regulation Z requires the use of the Closing Disclosure by the creditor to provide the required disclosures under § 1026.38 concerning the transaction to the consumer under § 1026.19(f)(1)(i), requires the settlement agent to provide to the creditor a copy of the disclosures provided to the seller under § 1026.19(f)(4)(iv) when the consumer and seller's disclosures are provided in separate documents, and requires the settlement agent to provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction under § 1026.19(f)(4)(i). GLBA section 502(e)(8) and Regulation P § 1016.15(a)(7)(i) permit this required sharing of information without providing notice of such information sharing and an opportunity to opt-out of such sharing.[108]

GLBA sections 502(e)(1) and 509(7)(A) provide an exception that applies if a financial institution's sharing of its customers' non-public personal information is required, or is a usual, appropriate, or acceptable method to provide the customer or the customer's agent or broker with a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product.

The Closing Disclosure, whether provided as a combined form containing consumer and seller information or separate forms reflecting each side of the real estate transaction conveying the real property from the seller to the consumer, is a record of the transaction (among other things), both for the consumer and the creditor, of the transactions between the consumer, seller, and creditor, as required by both TILA and RESPA. Such records may be informative to real estate agents and others representing both the consumer credit and real estate portions of

[108] GLBA 502(e)(8); 12 CFR 1016.15(a)(7)(i).

residential real estate sales transactions, as they provide the consumer or the consumer's agent with a record of the transaction. The Bureau in the preamble to the proposal stated that, based on its understanding of the real estate settlement process, it understands that it is usual, appropriate, and accepted for creditors and settlement agents to provide the combined or separate Closing Disclosure to consumers, sellers, and their agents as a confirmation, statement, or other record of the transaction, or to provide information on the status or value of the financial service or financial product to their customers or their customers' agents or brokers.

The Bureau included discussion of GLBA and Regulation P in the preamble in response to inquiries from creditors, settlement agents, and real estate agents about the sharing of the Closing Disclosure with third parties. One commenter correctly noted that GLBA sections 502(e)(1) and 509(7)(A) would apply only to the provision of the consumer's Closing Disclosure to the consumer's agent or broker and to the provision of the seller's Closing Disclosure to the seller's agent or broker.

As noted by several commenters, creditors and settlement agents may disclose customer information with the consent or at the direction of the customer provided that the customer has not revoked the consent or direction.[109] Some commenters requested that the Bureau provide a model form or guidance on the type of authorizations it would view as sufficient to satisfy GLBA section 502(e)(2). The Bureau did not propose such guidance or a model form in the proposal, however, nor did the Bureau in the proposal propose any amendments to Regulation P or its accompanying model forms. Furthermore, the Bureau does not believe that providing a model form or guidance as recommended by commenters would further the purposes of

[109] GLBA 502(e)(2); 12 CFR 1016.15(a)(1).

Regulation Z, which is to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices. For these reasons, the Bureau declines in this rulemaking to provide such guidance or amend Regulation P to provide a model form.[110]

With respect to comments requesting that the Bureau require or permit sharing of the Closing Disclosure with third parties, such as counterparties' real estate agents or other enumerated third parties, the Bureau notes that such sharing of the Closing Disclosure may be permissible currently to the extent that it is consistent with GLBA and Regulation P and is not barred by applicable State law. However, the Bureau does not believe that expansion of the scope of such permissible sharing would, in this rulemaking, be germane to the purposes of Regulation Z. The Bureau also notes that some of the rationales posed by commenters for including a requirement to share the Closing Disclosure with real estate agents, including as an accounting tool for the real estate brokerage for which the real estate agent is associated, or to provide accurate transaction data to be included in multiple listing services or shared with

[110] TILA section 102(a), 15 U.S.C 1601. The Bureau also notes that, when the regulations implementing the GLBA's privacy provisions were first adopted, the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively, the Agencies) declined to elaborate on the requirements for obtaining consent or the consumer safeguards that should be in place when a consumer consents, stating that "the resolution of this issue is appropriately left to the particular circumstances of a given transaction." The Agencies noted that "any financial institution that obtains the consent of a consumer to disclose nonpublic personal information should take steps to ensure that the limits of the consent are well understood by both the financial institution and the consumer. If misunderstandings arise, consumers may have means of redress, such as in situations when a financial institution obtains consent through a deceptive or fraudulent practice. Moreover, a consumer may always revoke his or her consent. In light of the safeguards already in place, the Agencies have decided not to add safeguards to the consent exception." Privacy of Consumer Financial Information, 65 FR 35182, 35184 (Jun. 1, 2000).

appraisers, are arguments concerning the sharing of information after consummation and also do not further the stated purposes of Regulation Z.

Since the Bureau did not propose any amendments or clarifications to creditor and settlement agent liability, commenter requests related to changes or clarifications on these issues are largely outside the scope of this rulemaking. The Bureau refers commenters to the section-by-section analysis to the TILA-RESPA Final Rule, where the Bureau stated that creditors under § 1026.19(f)(1)(v) are responsible for ensuring compliance with § 1026.19(f), even where a settlement agent provides the disclosure.[111] In the section by section analysis to the TILA-RESPA Final Rule the Bureau also stated, in response to commenter questions regarding creditor and settlement agent liability in providing the required disclosures under § 1026.19(f)(4) to the seller, that the Bureau proposed a separate requirement under § 1026.19(f)(4)(i) for the person conducting the settlement to provide the disclosures in § 1026.38 that relate to the seller's transaction to the seller because the Bureau recognizes that a creditor does not owe a duty to the seller and to account for variations in local law that may require that the seller receive a separate disclosure (e.g., for privacy reasons) or variations in local practice in which a seller and a consumer may not attend settlements in-person or at the same time.[112] The Bureau does not believe it is necessary to mandate how a settlement agent and creditor must coordinate to ensure settlement agent compliance as discussed in § 1026.19(f)(4)(iv) and comments 19(f)(1)(v)-2 through -4. In general, the Bureau believes final § 1026.19(f)(1)(v) sets forth a clear standard for settlement agents to comply with § 1026.19(f) to the extent they provide disclosures under that

[111] 78 FR 79730, 79869 (Dec. 31, 2013).
[112] 78 FR 79730, 79890 (Dec. 31, 2013).

section.[113] In response to the commenter statement that proposed comments 38(t)(5)(v)-1 and -3 appear to place the liability for providing the Closing Disclosure on the creditor, whereas under § 1026.19(f)(4) the settlement agent appears to be responsible for the Closing Disclosure provided to the seller, under the proposed commentary, the decision to provide separate Closing Disclosures to the consumer and the seller is to be made by the creditor. Even though § 1026.19(f)(4) indicates that the settlement agent is to provide the seller with a Closing Disclosure, the creditor is not prohibited from providing the Closing Disclosure to the seller if the creditor decides to provide it in some instances (such as if the creditor is performing the functions of a settlement agent, or the settlement agent refuses to provide a single, integrated disclosure or a seller-specific separate disclosure).

38(t)(5)(vi) Modified version of the form for a seller or third-party

As detailed in the section-by-section analysis of § 1026.38(t)(5)(v), the Bureau proposed and is now adopting new comment 38(t)(5)(vi)-1 to cross-reference comment 38(t)(5)(v)-1 for additional clarity on permissible form modifications in relation to the modified version of the Closing Disclosure for sellers or third parties.

38(t)(5)(vii) Transaction Without a Seller or for Simultaneous Subordinate Financing

The Bureau's Proposal

Section 1026.38(t)(5)(vii) permits modifications to form H-25 of appendix H for a transaction that does not involve a seller and for which the alternative tables are disclosed pursuant to § 1026.38(d)(2) and (e). Comment 38(t)(5)(vii)-2 explains that, as required by § 1026.38(a)(3)(vii)(B), a form used for a transaction that does not involve a seller must contain

[113] 78 FR 79730, 79869 (Dec. 31, 2013).

the label “Appraised Prop. Value,” or “Estimated Prop. Value” where there is no appraisal. The Bureau proposed to revise § 1026.38(t)(5)(vii), consistent with proposed revisions to § 1026.38(d)(2) and (e), to include simultaneous subordinate financing as transactions for which a modification of form H-25 of appendix H is permitted. The Bureau also proposed a technical revision so that comment 38(t)(5)(vii)-2 correctly references § 1026.38(t)(5)(vii) instead of § 1026.38(t)(5)(viii) and additional minor clarifying edits. In addition, the Bureau proposed to add comment 38(t)(5)(vii)(B)-1 to clarify that amounts provided by third parties may be disclosed as credits in the payoffs and payments table, comment 38(t)(5)(vii)(B)-2 to clarify the disclosure of subordinate financing proceeds, and comment 38(t)(5)(vii)(B)-3 to cross-reference comment 37(h)(2)(iii)-1 (for additional examples) and comment 38-4 (for the disclosure of a principal reduction to provide a refund).

Comments Received

Many of the comments that were submitted and that related to § 1026.38(d)(2) and (e) would be applicable to the proposal set forth under § 1026.38(t)(5)(vii) to permit simultaneous subordinate financing purchase transactions to be disclosed using the alternative disclosures. Please see the section-by-section analyses of § 1026.38(d)(2) and (e) for a general discussion of such comments.

As discussed more fully in the section-by-section analysis of § 1026.37(d)(2), and relevant to comments 38(t)(5)(vii)(B)-1 and -2, one commenter questioned what disclosures should be used when the optional alternative tables were initially used for the simultaneous subordinate financing transaction, but a seller later agrees to contribute to the costs of the subordinate financing, making continued use of the alternative tables impermissible under the proposal.

An industry commenter supported the Bureau's proposed amendments to comment 38(t)(5)(vii)(B)-2, which provided that simultaneous subordinate financing proceeds are required to be disclosed in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) on a first-lien transaction. However, other commenters noted that the Bureau did not propose any amendments to the provisions of the alternative Loan Estimate and Closing Disclosure to explain how simultaneous subordinate financing itself would be disclosed on the alternative disclosures, including how to disclose the amount of proceeds from the subordinate financing being applied to the first-lien transaction. Commenters also asserted that most creditors prefer that the Closing Disclosure for the simultaneous subordinate financing include a disclosure of the amount of proceeds being applied to the first-lien loan, and asked the Bureau to permit this common practice and clarify the provision under which the disclosure should be made.

The Final Rule

For the reasons discussed below, the Bureau is adopting § 1026.38(t)(5)(vii) as proposed with a minor technical revision, comment 38(t)(5)(vii)-2 as proposed, and comments 38(t)(5)(vii)(B)-1 and-2 as proposed with revisions; renumbering proposed comment 38(t)(5)(vii)(B)-2 as comment 38(t)(5)(vii)(B)-2.i; adding new comments 38(t)(5)(vii)(B)-2.ii and -2.iii; and adopting proposed comment 38(t)(5)(vii)(B)-3 with revisions. For the reasons discussed in the section-by-section analyses of § 1026.38(d)(2) and (e), the Bureau is finalizing the proposed amendment to § 1026.38(t)(5)(vii), which permits simultaneous subordinate financing purchase transactions to be disclosed using the alternative disclosures. Final § 1026.38(t)(5)(vii) permits modifications to form H-25 of appendix H for a transaction that does not involve a seller or for simultaneous subordinate financing transactions, and for which the alternative tables are disclosed under § 1026.38(d)(2) and (e). The Bureau did not receive any

comments in response to the proposed technical revision to comment 38(t)(5)(vii)-2 and the Bureau is adopting the proposed revision as final.

The Bureau is revising the reference to the partial exemption criteria of § 1026.3(h) in proposed comment 38(t)(5)(vii)(B)-1 to more closely align with final § 1026.3(h). Final comment 38(t)(5)(vii)(B)-1 provides, in part, that the proceeds from a loan that satisfies the partial exemption criteria in § 1026.3(h) is an example of an amount paid by a third party that may be disclosed as a credit on the payoffs and payments table under § 1026.38(t)(5)(vii)(B). As discussed in more detail below, the Bureau is also amending proposed comment 38(t)(5)(vii)(B)-1 to address the commenter's question regarding how to proceed under the proposal when the optional alternative table was properly used on the Loan Estimate, or even the Closing Disclosure, but a subsequent event would cause the continued use of the alternative table to be impermissible.

The Bureau is not finalizing the requirement to disclose certain amounts as negative numbers in proposed comments 38(t)(5)(vii)(B)-1 and -2 for the same reasons the Bureau is removing certain references to positive or negative numbers elsewhere in this final rule. While the Bureau did not propose these revisions and does not anticipate any circumstances in which funds provided on behalf of consumers and the proceeds from simultaneous subordinate financing disclosed on the first-lien Closing Disclosure would not be disclosed as negative numbers, the Bureau is not finalizing the technical requirement to disclose these amounts as negative numbers to allow flexibility for any unforeseen situations.

The Bureau is renumbering proposed comment 38(t)(5)(vii)(B)-2 as comment 38(t)(5)(vii)(B)-2.i and revising the comment for greater clarity. Proposed comment 38(t)(5)(vii)(B)-2 explained that on the Closing Disclosure for a first-lien transaction that also

has simultaneous subordinate financing, the proceeds of the subordinate financing are disclosed in the payoffs and payment table under § 1026.38(t)(5)(vii)(B). As discussed in the section-by-section analysis of § 1026.37(d)(2), a commenter asked the Bureau to clarify how to disclose the simultaneous subordinate financing loan proceeds that are applied to the first-lien transaction. In final comment 38(t)(5)(vii)(B)-2.i, the Bureau adds the heading "First-lien Closing Disclosure," explains that the comment pertains to first-lien Closing Disclosures disclosed using the alternative tables under § 1026.38(d)(2) and (e), and provides a refinance transaction as an example of a first-lien transaction that could be disclosed under § 1026.38(d)(2) and (e) that also has simultaneous subordinate financing. In response to the comments received on the proposal, the Bureau is also providing additional guidance on how to disclose the amount of subordinate financing, consistent with the requirements in comment 38(j)(2)(vi)-2 for disclosing the proceeds of subordinate financing on the standard Closing Disclosure.

The Bureau is adding comment 38(t)(5)(vii)(B)-2.ii to permit creditors to include, in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure, the proceeds of the subordinate financing applied to the first-lien transaction. Final comment 38(t)(5)(vii)(B)-2.ii responds to commenters' questions about how to disclose the simultaneous subordinate loan proceeds that will be applied to the first lien on the disclosure for the simultaneous subordinate financing. The commenters asserted that most creditors prefer that the simultaneous subordinate financing Closing Disclosure include a disclosure of the amount of loan proceeds that are applied to the first-lien loan, and asked the Bureau to permit this practice. In the proposal, the Bureau noted that the funds that are provided to the consumer from the proceeds of subordinate financing being applied to the first-lien transaction would not be included in the payoffs and payments table on the simultaneous subordinate financing disclosure.

As a result, the cash to close amount disclosed under § 1026.38(e)(5)(ii) would have represented the loan proceeds as "cash out" to the borrower. For the same reasons discussed in the section-by-section analysis of § 1026.37(h)(2)(iii), the Bureau is not finalizing the proposed approach and instead is adding new comment 38(t)(5)(vii)(B)-2.ii to permit creditors to include the proceeds of the subordinate financing applied to the first-lien transaction in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure. The Bureau is making similar amendments in commentary to §§ 1026.37(h)(2)(iii) and 1026.38(j)(1)(v).

The Bureau is adding comment 38(t)(5)(vii)(B)-2.iii and amending proposed comment 38(t)(5)(vii)(B)-1 to address the commenter's question regarding how to proceed under the proposal when the optional alternative table was properly used on the Loan Estimate, or even the Closing Disclosure, but a subsequent event would cause the continued use of the alternative table to be impermissible. For the reasons discussed in the section-by-section analysis of § 1026.37(d)(2), the Bureau is directly addressing the commenter's concern by adding new comment 38(k)(2)(vii)-1, amending comments 38(d)(2)-1 and 38(j)-3, and amending proposed comments 38(t)(5)(vii)(B)-1 and -2 (including adding comment 38(t)(5)(vii)(B)-2.iii), to require the disclosure of the seller's contributions to the subordinate financing, if any, in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure and the summaries of transactions table on the first-lien Closing Disclosure, when the alternative disclosures are used for the simultaneous subordinate financing transaction. Final comment 38(t)(5)(vii)(B)-2.iii explains that if a creditor discloses the alternative tables pursuant to § 1026.38(d)(2) and (e) on the simultaneous subordinate financing Closing Disclosure, the creditor must also disclose in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure, any seller contributions toward the simultaneous subordinate financing. Final comment

38(t)(5)(vii)(B)-1 includes, as an example of amounts paid by third parties that may be disclosed as credits on the simultaneous subordinate financing's payoffs and payments table under § 1026.38(t)(5)(vii)(B), contributions from a seller for costs associated with a simultaneous subordinate financing transaction. As discussed in the section-by-section analysis of § 1026.38(k)(2), final comment 38(k)(2)(vii)-1 explains that if the simultaneous subordinate financing transaction is disclosed using the alternative tables pursuant to § 1026.38(d)(2) and (e), the first-lien Closing Disclosure must include, in the summaries of transactions table for the seller's transaction under § 1026.38(k)(2)(vii), any contributions toward the simultaneous subordinate financing from the seller that are disclosed in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) on the simultaneous subordinate financing Closing Disclosure. The result of these amendments, coupled with the amendments to comment 38(j)-3, is that the first-lien Closing Disclosure will be able to record the entirety of the seller's transaction.

For example, assume the simultaneous subordinate financing transaction is disclosed using the alternative tables pursuant to § 1026.38(d)(2) and (e) and the seller contributes $200.00 toward the closing costs of the simultaneous subordinate financing. The simultaneous subordinate financing transaction Closing Disclosure must disclose the $200.00 contribution in the payoffs and payments table in accordance with § 1026.38(t)(5)(vii)(B) and comment 38(t)(5)(vii)(B)-1. The first-lien Closing Disclosure must disclose the $200.00 contribution in the summaries of transactions table for the seller's transaction under § 1026.38(k)(2)(vii) on the first-lien Closing Disclosure, thereby recording the entirety of the seller's transaction on the first-lien Closing Disclosure. For a more detailed discussion of these new and revised comments, see the section-by-section analyses of § 1026.38(d)(2), (j), and (k)(2).

The Bureau is adopting proposed comment 38(t)(5)(vii)(B)-3 with technical conforming revisions. As discussed in more detail in the section-by-section analysis of § 1026.38 pertaining to comment 38-4 above, an industry group recommended that the Bureau use the phrase "principal reduction" instead of "principal curtailment," noting that consumers would be more familiar with the recommended phrase. The Bureau is revising proposed comment 38(t)(5)(vii)(B)-3 to reflect the phrase "principal reduction." Industry commenters also requested that the Bureau permit the use of principal curtailments for situations other than when a creditor is providing a credit for a tolerance refund. In the proposal, the Bureau sought to address the particular issue of how to disclose a principal curtailment that is used to provide a tolerance refund, but did not intend to propose to limit the use of principal curtailments to providing tolerance refunds. The Bureau is revising and restructuring comment 38-4 to provide clarity on the disclosure of principal reductions that are and are not used to provide tolerance refunds. As a result, the Bureau is amending comment 38(t)(5)(vii)(B)-3 to remove the reference to a tolerance refund under § 1026.19(f)(2)(v), making the comment applicable to all principal reductions, regardless of whether the principal reduction is for the purpose of providing a tolerance refund.

38(t)(5)(ix) Customary Recitals and Information

Comment 38(t)(5)(ix)-1 provides examples of information permitted to be disclosed on an additional page for the disclosure of customary recitals and information used locally in real estate settlements. The Bureau proposed to revise comment 38(t)(5)(ix)-1 to cross-reference proposed comment 38-4, which would have provided options for the disclosure of a principal curtailment to provide a refund under § 1026.19(f)(2)(v), including disclosure under § 1026.38(t)(5)(ix).

For the reasons discussed below, the Bureau is not finalizing the proposed amendments to comment 38(t)(5)(ix)-1. As discussed in more detail in the section-by-section analysis of § 1026.38 pertaining to comment 38-4 above, some industry commenters raised concerns with the various options for disclosure of principal curtailments proposed by the Bureau. While the Bureau intended for the proposal to provide the flexibility for the disclosure of principal curtailments discussed in the Bureau staff's informal April 2016 webinar, the Bureau appreciates commenters' assertions that a uniform disclosure method for principal curtailments would reduce compliance burden, aid consumer understanding, and aid the utilization of a uniform data standard. The Bureau is therefore revising proposed comment 38-4 to, among other things, limit the locations in which a creditor may disclose principal reductions to only § 1026.38(j)(1)(v) and (t)(5)(vii)(B). As a result, the Bureau is not finalizing the proposed revisions to comment 38(t)(5)(ix)-1, which would have cross-referenced comment 38-4 for an explanation of how to disclose a principal curtailment under § 1026.38(t)(5)(ix). If there is insufficient space under § 1026.38(j)(1)(v) or (t)(5)(vii)(B) for certain required elements of the principal reduction disclosure, final comment 38-4 permits a creditor to provide an abbreviated disclosure under § 1026.38(j)(1)(v) or (t)(5)(vii)(B) and a complete disclosure with a reference to the abbreviated disclosure under an appropriate heading on an addendum, in accordance with § 1026.38(j) and (t)(5)(ix), as applicable. No amendments to comment 38(t)(5)(ix)-1 are necessary to effectuate this change. See the section-by-section analysis of § 1026.38 pertaining to comment 38-4 for an explanation of when and how an addendum may be used in the context of a principal reduction disclosure.

Appendix D—Multiple-Advance Construction Loans

Loan Term

The Bureau's Proposal

Proposed comment app. D-7.i clarified how a creditor may disclose the loan term, pursuant to §§ 1026.37(a)(8) and 1026.38(a)(5)(i), for a construction-permanent loan, taking into account the fact that such loans may be disclosed as one transaction or as more than one transaction. Under proposed comment app. D-7.i.A, if the creditor disclosed the construction and permanent financing as a single transaction, the loan term disclosed would be the total combined term of the construction period and the permanent period. To illustrate this result, the proposed comment provided an example of how to disclose the loan term when a single set of disclosures is used for the combined construction-permanent loan. In the example, if the term of the construction period is 12 months and the term of the permanent period is 30 years, and both phases are disclosed as a single transaction, the loan term disclosed is 31 years. Proposed comment app. D-7.i.A also included a cross-reference to comment 37(a)(8)-3 intending to explain that, in accordance with § 1026.17(c)(3) and its accompanying commentary, the effect of minor variations in the number of days counted for the months or years of a loan may be disregarded for purposes of the loan term disclosure.

Proposed comment app. D-7.i.B clarified how to disclose the term of the permanent phase of a construction-permanent loan when the creditor elected to disclose the two phases as separate transactions. Because the permanent phase may be consummated and disclosed at the same time as the construction phase and may also be disclosed as a separate transaction with payments that do not begin until months after consummation, creditors have reported some uncertainty about when to begin counting the loan term of the permanent phase for disclosure

purposes. Proposed comment app. D-7.i.B explained that, consistent with proposed comment 37(a)(8)-3, the loan term of the permanent financing is counted from the date that interest for the first scheduled periodic payment of the permanent financing begins to accrue, regardless of when the permanent phase is disclosed.

Comments Received

As explained in the above section-by-section analysis of comment 37(a)(8)-3, commenters were concerned that comment 37(a)(8)-3 did not include the explanations referred to in comment app. D-7.i.

The Final Rule

For the reasons discussed below, the Bureau is finalizing comment app. D-7.i substantially as proposed, but the Bureau is removing the cross-references to comment 37(a)(8)-3 in comment app. D-7.i.

The intent of the cross-reference to comment 37(a)(8)-3 in comment app. D-7.i.A was to explain that, in accordance with § 1026.17(c)(3) and its accompanying commentary, the effect of minor variations in the number of days counted for the months or years of a loan may be disregarded for purposes of the loan term disclosure. However, citing only to § 1026.17(c)(3) might raise questions as to the applicability of other sections that are not cited, which was not the intent of the Bureau. Sections such as § 1026.17(c)(4) are also applicable in determining the impact of minor variations in the number of days counted for the loan term, as well as other disclosures, as applicable. In order to avoid creating an impression that only § 1026.17(c)(3) applies for purposes of construction and construction-permanent disclosures to the exclusion of other potentially applicable sections, the Bureau is not finalizing the cross-references to comment 37(a)(8)-3 in comment app.D-7.i.

A similar approach to generally applicable provisions was taken in the TILA-RESPA Final Rule with respect to providing specific guidance in § 1026.37(c) regarding whether the periodic principal and interest disclosure should be based on an average 30-day month or some other measure. There, the Bureau noted that creditors may base their disclosures on calculation tools that assume that all months have an equal number of days, even if their practice is to take account of the variations in months for purposes of collecting interest. The Bureau further noted that because this § 1026.17(c)(3) guidance applies generally to the disclosures required by § 1026.37, the Bureau did not believe it was necessary or appropriate to provide such guidance in § 1026.37(c).[114]

Comment app. D-7.i.B, which explains how the loan term of the permanent phase is counted, also included a statement that it was consistent with comment 37(a)(8)-3. As explained above, comment 37(a)(8)-3 only contains a cross-reference to comment app. D-7.i. and no additional explanations. Accordingly, the reference to comment 37(a)(8)-3 is deleted, because there is no explanation there for comment app. D-7.i. to be "consistent with."

Product

The Bureau's Proposal

Proposed comment app. D-7.ii would explain how to disclose the duration of the "Interest Only" feature of a construction loan or the construction phase of a construction-permanent loan under §§ 1026.37(a)(10)(ii)(B) and 1026.38(a)(5)(iii). The duration of the interest-only period depends on whether the construction phase is disclosed separately, which would be covered by

[114] *See* 78 FR 79730, 79937 (Dec. 31, 2013).

proposed comment app. D-7.ii.A, or as a combined transaction with the permanent phase, which would be covered by proposed comment app. D-7.ii.B.

Section 1026.37(a)(10) requires disclosure of the loan product, including the features that may change the periodic payment on the loan. Section 1026.37(a)(10)(iv) requires disclosure of the duration of the payment period of certain of the loan features, including the "Interest Only" feature under § 1026.37(a)(10)(ii)(B). Disclosure of an "Interest Only" feature is required if the loan does not have a negative amortization feature and one or more regular periodic payments may be applied only to interest accrued and not to the loan principal. The duration of the "Interest Only" payment period, therefore, counts the regular periodic payments that may be applied only to interest accrued and not to the loan principal.

In a construction loan disclosure, or when a separate disclosure is provided for the construction phase of a construction-permanent loan, the final payment will typically be a balloon payment that is the sum of the final interest payment and the loan principal. As a payment that includes principal, the final balloon payment is not counted for purposes of determining the duration of the "Interest Only" payment period. This means, for example, that the product disclosure for a fixed rate construction loan with a term of one year is "11 mo. Interest Only, Fixed Rate." Proposed comment app. D-7.ii.A provided this explanation and example.

Proposed comment app. D-7.ii.B explained that, if a single, combined construction-permanent disclosure is provided, the time period of the interest-only feature that is disclosed as part of the product disclosure under §§ 1026.37(a)(10) and 1026.38(a)(5)(iii) is the full term of the interest-only construction financing. In such cases, the construction and permanent phases are considered together as a single loan or transaction, and there is no balloon payment of

principal and interest at the end of the construction phase. Proposed comment app. D-7.ii.B provided an example explaining that a creditor discloses the "Product" for a fixed rate, construction-permanent loan with an interest-only construction phase of 12 months as "1 Year Interest Only, Fixed Rate."

Comments Received

While the Bureau did not receive any comments that directly addressed proposed comment app. D-7.ii, a comment on proposed comment app. D-7.iii, which is further discussed in the section-by-section analysis for comment app. D-7.iii below, raised issues that directly concern the disclosure of the loan product under § 1026.37(a)(10). Proposed comment app. D-7.iii provided, in part, that if the creditor may modify the rate for permanent financing when the construction financing converts to permanent financing, certain variable-rate disclosures are provided regardless of whether the permanent financing has a fixed, adjustable, or step rate. The commenter indicated that there could be confusion over the applicable product disclosures for construction-permanent loans disclosed as either one transaction or two transactions but consummated simultaneously where the interest rate for the permanent phase is set upon completion of the construction phase. The commenter indicated the loan product for such a loan would seem to be adjustable rate, rather than fixed rate, which could generate confusion over how to disclose the loan product for this scenario.

The Final Rule

The Bureau agrees with the commenter and, for this reason, is finalizing comment app. D-7.ii substantially as proposed, but adding comment app. D-7.ii.C and making a conforming change to comment app. D-7.ii.B for consistency. Comment app. D-7.ii.C clarifies that for construction-permanent loans with a single consummation, in the case of either a separate

disclosure for the permanent phase or a single combined disclosure for both phases, if the creditor reserves the right to modify the disclosed interest rate for the permanent phase at a post-consummation date and the modified interest rate for the permanent phase is not known at the time of consummation, the loan product disclosed under §§ 1026.37(a)(10) and 1026.38(a)(5)(iii) is "Adjustable Rate." This is true even if, once set at the later date, the interest rate for the permanent phase would not change again.

Comment app. D-7.ii.C reflects the applicability of § 1026.37(a)(10)(i) when disclosing the loan product for construction-permanent loans with a single consummation, just as it would apply to any other covered loan. Under § 1026.37(a)(10)(i), if the creditor reserves the right to modify the interest rate for the permanent phase of a construction-permanent loan with a single consummation, and that interest rate may increase but the rate that will apply is not known at consummation, the loan product disclosed under §§ 1026.37(a)(10) and 1026.38(a)(5)(iii) is "Adjustable Rate," if the permanent phase is disclosed separately or a single disclosure is used for the combined construction-permanent financing. Further, any other disclosures required for the loan product specified would also apply. For example, the introductory rate or payment period disclosure as required by §§ 1026.37(a)(10)(iv) and 1026.38(a)(5)(iii) is disclosed even if the construction and permanent phases individually are fixed rate. In the loan described above, if the loan is disclosed using a single disclosure for a combined construction-permanent financing, the introductory period disclosure would be the term of the construction phase and then the term of the permanent phase, e.g. "1/30 Adjustable Rate." If, however, the permanent phase is disclosed separately, assuming the permanent phase is a fixed rate upon conversion from the construction phase, the introductory rate disclosure would be zero followed by the term of the permanent phase, e.g., "0/30 Adjustable Rate."

Additionally, should the creditor reserve the right to modify the interest rate for the permanent phase of a construction-permanent loan with a single consummation, and that interest rate may increase but the rate that will apply is not known at consummation, the other adjustable-rate loan disclosures would be required, if not otherwise already required. For example, comment app. D-7.iii as finalized discusses the requirements for the disclosure under § 1026.20(c).

Similarly, the Adjustable Interest Rate table, as required by §§ 1026.37(j) and 1026.38(n), is disclosed where the creditor reserves the right to modify the interest rate for the permanent phase of a construction-permanent loan with a single consummation, and that interest rate may increase but the rate that will apply is not known at consummation. If the permanent phase is disclosed separately or a single disclosure is used for the combined construction-permanent financing, the creditor discloses the index and margin, as required § 1026.37(j)(1), using the index and/or margin identified in the legal obligation that will be used to determine the interest rate for the permanent phase at conversion. The creditor also discloses the initial interest rate at consummation under § 1026.37(j)(3), which may be the interest rate for the construction phase. Finally, the creditor discloses the minimum and maximum interest rates for the permanent phase, as required by § 1026.37(j)(4). If the legal obligation does not provide a minimum and/or maximum interest rate cap for the permanent phase interest rate upon conversion, as stated in current comment 37(j)(4)-1 and -2, the disclosure is based on the applicable law.

Comment app. D-7.ii.C is consistent with the applicability of the other § 1026.37(a)(10)(i) provisions to construction-permanent loans. For example, using the definition in § 1026.37(a)(10)(i)(B), if, for a construction-permanent loan using a single

disclosure for both phases, the interest rates for both phases are fixed at consummation and the creditor does not reserve the right to modify the rate after consummation, but the interest rates are not the same, the creditor would disclose the loan product under §§ 1026.37(a)(10) and 1026.38(a)(5)(iii) as a "Step Rate" product because the interest rate will change after consummation and the rates and periods they will apply are known. Further, the introductory rate and payment period disclosures required by §§ 1026.37(a)(10)(iv) and 1026.38(a)(5)(iii) would also be required.

But it should be noted that comment app. D-7.ii.C is read in the context of the rest of the rule. For example, while a construction-permanent loan using a single disclosure for both phases where the creditor reserves the right to modify the permanent phase interest rate after consummation would not by itself require disclosure of the Adjustable Payments table, an aspect of the construction phase or permanent phase might otherwise require it, such as an interest-only period in the construction phase. As explained in the discussion of proposed comment app. D-7.v, finalized as comment app. D-7.iv, the adjustable payment table is included for separate disclosures of the construction phase or combined construction-permanent disclosures if the interest during the construction phase is payable only on the amount actually advanced—in such cases the periodic payment may change after consummation but not based on an adjustment to the interest rate.

Interest Rate

The Bureau's Proposal

Proposed comment app. D-7.iii explained the disclosure of the interest rate in a construction-permanent loan pursuant to §§ 1026.37(b)(2) and 1026.38(b). The comment addressed a unique aspect of some construction-permanent loans: If the permanent phase is

disclosed at the same time as the construction phase, either in a combined disclosure with the construction phase or in a separate disclosure of only the permanent phase, the interest rate of the permanent financing may not be known because the conversion to permanent financing may not take place for several months. If the permanent financing has an adjustable rate and separate disclosures are provided, the proposed comment stated that the rate disclosed for the permanent financing is the fully-indexed rate pursuant to § 1026.37(b)(2) and its commentary. If the permanent financing has a fixed rate, proposed comment app. D-7.iii would have explained that the rate disclosed is based on the best information reasonably available at the time the disclosures are made and included a cross-reference to comments 19(e)(1)(i)-1 and 19(f)(1)(i)-2, which provide explanation of the best information reasonably available standard. The proposed comment also provided instruction on disclosures that may be required after consummation if the creditor may modify the rate disclosed for the permanent financing when the construction financing converts to permanent financing. If such an adjustment of the interest rate occurs at the time of conversion and results in a payment change, the creditor must provide the rate and payment adjustment disclosures required by § 1026.20(c) (commonly referred to as ARM notices) at least 60 days, and no more than 120 days, before the first payment at the adjusted level is due, without regard to whether the permanent financing has a fixed, adjustable, or step rate. The Bureau sought comment on the appropriateness of the provision of the § 1026.20(c) disclosures in connection with the conversion to permanent financing and any operational changes for creditors in a construction-permanent loan context to provide the disclosure required by § 1026.20(c), generally required at least 60 days, and no more than 120 days, before the first payment at the adjusted level is due.

Comments Received

The Bureau received one comment on the proposal regarding comment app. D-7.iii. The commenter noted that, if the loan in question is a two-phase construction-permanent loan in which the permanent phase will be consummated at the close of the construction phase of the loan, the creditor can issue a revised Loan Estimate for the permanent phase of the loan any time prior to 60 days before consummation of the permanent phase. The Bureau agrees that such a revision of the Loan Estimate may be permissible under § 1026.19(e)(3)(iv). The commenter stated that if the transaction is a single consummation construction-permanent loan and the creditor may modify the rate for permanent financing when the construction financing converts to permanent financing, the loan product would not be fixed-rate, and if that rate upon conversion is unknown would not be step-rate either, as stated in proposed comment app. D-7.iii. The commenter further noted that the permanent phase of the transaction would be an adjustable-rate loan product if the creditor reserves the right to modify the rate when the construction loan ends.

The Final Rule

The Bureau is finalizing comment app. D-7.iii substantially as proposed, but with clarifications. The interest rate disclosed under §§ 1026.37(b)(2) and 1026.38(b) is the interest rate applicable to the transaction at consummation. If the construction phase and permanent phase of a construction-permanent transaction are consummated at the same time, the payments for the permanent phase will often not be due for a year or more. In such situations, the legal obligation may provide that the interest rate of the permanent phase may change when the construction phase converts to the permanent phase, and further, may not specify what the interest rate will change to at the permanent phase. As discussed in final comment app. D-7.ii,

the fact that the permanent phase interest rate may change and increase after consummation requires the permanent phase, if considered separately, to be disclosed as an adjustable-rate product, as defined in § 1026.37(a)(10)(i)(A) and not a fixed-rate or step-rate product, even if the loan will become a fixed-rate or a step-rate at the time of conversion. Similarly, as discussed in final comment app. D-7.ii, the combined construction-permanent transaction in such a situation would also be disclosed on the combined Loan Estimate and Closing Disclosure as an adjustable-rate product. However, the construction phase, if disclosed separately and if it has no interest rate changes of its own, would not. The disclosure of the permanent phase as an adjustable-rate product in these circumstances applies even if, upon conversion, the permanent phase will have a fixed interest rate. The statement "regardless of whether the permanent financing has a fixed, adjustable, or step rate" at the end of the comment as proposed is not adopted given the clarification of the product in final comment app. D-7.ii.

The Bureau is providing clarification in comment app. D-7.iii that in a transaction secured by the consumer's principal dwelling, if the legal obligation provides that the interest rate of the permanent financing may change, and therefore may increase, when the construction financing converts to permanent financing, and such conversion results in a fixed-rate transaction and payment change, the creditor must provide the disclosures pursuant to § 1026.20(c) generally at least 60 days, and no more than 120 days, before the first payment on the permanent phase at the adjusted level is due. Pursuant to § 1026.20(c), an adjustable-rate mortgage (ARM) payment change disclosure must be provided to the consumer when an interest rate adjustment resulting from the conversion of an adjustable-rate mortgage to a fixed-rate transaction, if that interest rate adjustment results in a corresponding payment change, as is the case in the conversion of the construction to a permanent loan described above.

If the permanent phase interest rate disclosed at consummation may increase when the construction phase converts to the permanent phase, the permanent phase is both an adjustable-rate product under § 1026.37(a)(10)(i)(A) and an ARM, as identified in § 1026.20(c)(1). If the interest rate set at conversion for the permanent financing will not change post-conversion, the permanent financing then becomes a fixed-rate loan, and the conversion from construction to permanent financing is a conversion of the permanent financing from an adjustable-rate mortgage to a fixed-rate transaction. Thus, the ARM payment change disclosure must be provided to consumers in this situation because, pursuant to § 1026.20(c), the disclosure is required when an ARM converts to a fixed-rate transaction, if the interest rate adjustment results in a payment change. Note that this requirement only applies if the loan is secured by the consumer's principal dwelling. Because the § 1026.20(d) ARM initial interest rate adjustment disclosure is not required when an ARM converts to a fixed-rate transaction, that requirement would not be triggered by the construction to permanent phase conversion. However, should the construction or permanent phase individually otherwise meet the coverage requirements of § 1026.20(c) or (d), for example, if the permanent phase has an adjustable rate after conversion or if the initial term of the construction phase exceeds one year, nothing in comment app. D-7.iii should be read to exclude or modify those requirements.

Finally, in response to the commenter's assertion regarding resetting tolerances for the permanent phase, the Bureau notes that if the loan in question is a two-phase construction-permanent loan in which the permanent phase will be consummated at the close of the construction phase, and if consistent with § 1026.19(e)(3)(iv), the creditor can issue revised disclosures and reset tolerances by issuing a revised Loan Estimate for the permanent phase, which may disclose a different interest rate than originally disclosed.

Initial Periodic Payment

Proposed comment appendix D-7.iv would have clarified that the general rule of § 1026.17(c)(3), which allows creditors to disregard the effects of certain minor variations in making calculations and disclosures, applies to the appendix D calculation of the initial periodic payment amount disclosed under §§ 1026.37(b)(3) and 1026.38(b). For example, the effect of the fact that months have different numbers of days may be disregarded in making the disclosure.

The Bureau did not receive comments on the proposed clarification to comment app. D-7.iv. However, for the reasons explained in the above section-by-section analysis of comment app. D-7.i, the Bureau is removing this cross-reference for consistency. While the creditor may consider § 1026.17(c)(3) to determine the effects of certain minor variations in making calculations and disclosures, this should not be to the exclusion of other applicable sections, such as § 1026.17(c)(4). Accordingly, proposed comment app. D-7.iv is not being adopted.

Increase in Periodic Payment

The Bureau's Proposal

Sections 1026.37(b)(6) and 1026.38(b), by cross-reference, require a creditor to provide an affirmative or negative answer to the question, "Can this amount increase after closing?" with respect to certain amounts, including the initial periodic payment amount disclosed under § 1026.37(b)(3). Creditors have asked the Bureau what answer may be provided to this question in the case of construction financing if the actual schedule of advances is not known. Proposed comment app. D-7.v explained that, in general, the answer a creditor provides will depend upon whether the construction financing has a fixed rate or an adjustable rate. Proposed comment app. D-7.v.A and B discussed the disclosure of fixed-rate construction financing, and proposed comment app. D-7.v.C discussed the disclosure of adjustable-rate construction financing.

The payments made during the construction phase are often interest-only payments. The amount of any particular interest-only payment on a construction loan is typically determined by applying the contract interest rate to the amounts advanced. The amounts advanced may be tied to construction milestones and the total of the amounts advanced will increase with each milestone, usually resulting in increases in the amounts of the interest-only payments that become due. If the construction financing has a fixed rate, the periodic interest-only payments will increase over the term of the loan, reflecting increases in the amounts advanced. If the construction financing has an adjustable rate, the periodic interest-only payments may also increase over time, but the increase may be due to both an increase in the adjustable interest rate and increases in the amounts advanced.

A creditor may use the methods in appendix D to estimate interest and make disclosures for construction loans if the actual schedule of advances is not known. The calculation of the periodic payments in a fixed-rate construction loan using appendix D produces interest-only periodic payments that are equal in amount. The preamble of the proposed rule explained that although the actual interest-only payments will increase over the term of the construction financing as the amounts advanced increase, because the methods provided by appendix D to estimate interest may be used to make disclosures, a technically correct and compliant answer to "Can this amount increase after closing?" is "NO." The periodic payments for fixed-rate construction financing, as calculated under appendix D, do not increase but are equal.

Creditors nonetheless have expressed concern over providing an answer of "NO" to the question, "Can this amount increase after closing?" This technically correct disclosure may not reflect the actual increase in payments that will occur over the term of the construction financing, even though the amount of such increases is not known at or before consummation. Thus, the

Bureau proposed comment app. D-7.v.A to explain that a creditor may disclose the initial periodic payment using appendix D and nevertheless may answer "YES" to the question, "Can this amount increase after closing?" Comment app. D-7.v.A also explained that a technically correct answer to "Can this amount increase after closing" is "NO." The proposed comment is consistent with informal guidance provided by the Bureau.

Proposed comment app. D-7.v.B explained that, if separate disclosures are provided for fixed-rate construction and permanent financing and appendix D is used to compute the periodic payment for the construction phase, the disclosures under § 1026.37(b)(6)(iii) and the disclosure of a range of payments under § 1026.37(c)(2)(i) may be omitted. As discussed above, the periodic payments calculated under appendix D for a fixed-rate loan are equal. Consequently, the proposal stated a creditor in that case does not provide the increase in periodic payments disclosures under § 1026.37(b)(6)(iii), such as the due date of the first adjusted principal and interest payment or a reference to the adjustable payments table required by § 1026.37(i). The proposal also stated such a creditor also does not disclose the principal and interest payment under § 1026.37(c)(2)(i) as a range of payments in the projected payments table, even though the interest-only payments would increase over the term of the construction financing, reflecting increases in the total amount advanced.

Proposed comment app. D-7.v.C stated that, if separate disclosures are provided for adjustable-rate construction financing and appendix D is used to calculate the periodic payment, the disclosures reflect the changes that are due to changes in the interest rate but not the changes that are due to changes in the amounts advanced and provided an illustrative example. Proposed comment app. D-7.v.C. also stated that while a creditor extending fixed-rate construction financing may answer either "YES" or "NO" as the answer to the question, "Can this amount

increase after closing?," because payments may increase based on increases in advances, a creditor extending adjustable-rate construction financing would disclose "YES" as the answer to the question, "Can this amount increase after closing?" When a creditor extends adjustable-rate construction financing, unlike when it extends fixed-rate construction financing, payments may increase based on an increase in the adjustable interest rate as well as an increase in the amount advanced. Because the payments may increase in such cases, without regard to the amount of advances, a creditor would disclose "YES" as the answer to the question, "Can this amount increase after closing?" and "NO" would not be a technically correct answer.

Proposed comment app. D-7.v.C. also stated that, for adjustable-rate construction financing, a creditor must provide disclosures reflecting changes that are due to changes in the interest rate, but may omit disclosures reflecting changes that are due to changes in the total amount advanced. Proposed comment app. D-7.v.C. explained that the creditor may omit the adjustable payment table disclosure required by § 1026.37(i) because the disclosure would reflect a change due to a change in the total amount advanced. Consistent with these disclosures, the creditor would also disclose a range of payments in the principal and interest row of the projected payments table under § 1026.37(c)(2)(i).

Comments Received

Commenters raised concerns regarding the options provided by the proposed commentary and the time that would be required to implement it. An individual commenter objected to the option to provide either an affirmative or negative answer to the question, "Can this amount increase after closing?" The commenter stated that disclosing "NO" would be inaccurate as the payment can range as high as interest on the total amount of the approved loan or as little as $0.00, if no funds have been drawn. A vendor commented that the optionality in proposed

comment app. D-7.v.A would complicate compliance because creditors and investors would need to conduct additional staff training regarding these options, including that they are only applicable for fixed-rate transactions. The option provided under proposed comment app. D-7.v.B to omit the disclosures under § 1026.37(b)(6)(iii) and (c)(2)(i) would similarly complicate compliance and require training. The commenter further noted that implementing these options would require significant reprogramming for technology providers across the industry, including loan origination, document production, and compliance software companies. The commenter also stated that useful information under § 1026.37(b)(6)(iii) and (c) that is based on the principal balance would be able to be disclosed and noted consumers would benefit from a disclosure of the maximum principal and interest payment based on the maximum principal balance that could be outstanding during the construction phase.

Several vendors expressed implementation concerns with proposed comments app. D-7.v.A and B. They indicated their systems cannot support a "YES" for fixed-rate construction-only disclosures without the § 1026.37(b)(6)(iii) bullet points as the proposed comments would permit. The vendors' comments noted that, currently, most software automatically produces the bullets under § 1026.37(b)(6)(iii) when a "YES" answer is provided under § 1026.37(b)(6). Thus, while the proposal indicated the bullets under § 1026.37(b)(6)(iii) are optional, the vendors indicated the optionality did not exist under their programs. The proposed changes would require reprogramming and would also complicate software integrations. Vendors estimated the proposed comments would require 9 to 12 months to implement. These implementation concerns were echoed by a trade organization, which commented that the construction loan management (CLM) systems that creditors use to manage draws and inspections during the construction phase do not communicate with servicing and loan origination software. Because of

such software issues, creditors manually interface their CLM systems with their other systems. The comment noted sufficient time will be needed to adjust systems and processes to the new rules.

The Final Rule

Based on the concerns initially raised by creditors and noted in the proposed rule, and the additional concerns expressed in the comments, the Bureau is adopting comment app. D-7.v with modification. The option to disclose an answer of either "YES" or "NO" to the question "Can this amount increase after closing?" under comment app. D-7.v.A is not adopted under this final rule. Only a disclosure of "YES" would be provided as the § 1026.37(b)(6) response to whether there will be an increase in the periodic payment when the amounts or timing of advances is unknown at or before consummation and the appendix D assumption that applies if interest is payable only on the amount advanced for the time it is outstanding is used to calculate the periodic payment. This change will address the concerns of creditors and others that the disclosure should reflect the fact that the payments actually increase over the term of the construction financing, even though the amount of such increases is not known at or before consummation. However, during the optional compliance period before October 1, 2018, and after the optional compliance period with respect to transactions for which a creditor or mortgage broker received an application during the optional compliance period, disclosures may continue to be made in the manner explained by the informal guidance provided by the Bureau and restated in proposed comment app. D-7.v.A. This takes into account the concerns of vendors, creditors, and others for sufficient time to reprogram systems and train staff to integrate the disclosures finalized here into their systems and processes.

To further simplify the disclosures and their implementation, the scope of comments app. D-7.v.A. and B is not limited to circumstances when separate disclosures are provided for fixed-rate construction financing as they were in the proposed rule and comment app. D-7.v.C is not limited to separate disclosures for adjustable-rate construction financing. As a practical matter, if "YES" is the answer to "Can this amount increase after closing?" when separate disclosures are provided for either fixed-rate or adjustable-rate construction financing, "YES" will necessarily be the answer when a combined disclosure for that financing is provided. This is generally the result whenever a combined disclosure is used because the interest-only payment of the construction financing increases to the principle and interest payment of the permanent financing. Comment app. D-7.v therefore applies to both separate construction disclosures and combined construction-permanent disclosures because, in either case, the § 1026.37(b)(6) disclosures would reflect the construction phase during which there may be an increase in the periodic payment. In addition, the statement, "If the amounts or timing of advances is unknown at or before consummation and the appendix D assumption that applies if interest is payable only on the amount advanced for the time it is outstanding is used to calculate the periodic payment" is provided as the introductory paragraph that applies to all of comment app. D-7.v.A through C. This condition in the introductory paragraph is the perquisite for the applicability of the explanations that follow in the subsequent paragraphs of the comment. The Bureau considers that the greater consistency provided for the § 1026.37(b)(6) disclosures by the final rule will provide greater clarity and help creditors facilitate the implementation of these provisions. However, the option to answer "NO" during the optional compliance period before October 1, 2018, will continue to be limited to circumstances when separate disclosures are provided for fixed-rate construction financing. As noted above, when a single, combined disclosure is used

for both the construction and permanent phases, or when the construction phase has an adjustable rate and either separate or combined disclosures are provided, the initial interest-only periodic payment may increase, even when the initial payment is calculated in accordance with appendix D.

The option in proposed comment app. D-7.v.B to omit the disclosures under § 1026.37(b)(6)(iii) and the disclosure of a range of payments under § 1026.37(c)(2)(i) is adopted with modifications. In adopting these modifications, the Bureau agrees with the comments noting that useful information could be provided to consumers based on the maximum principal balance that could be outstanding during the construction phase. The Bureau is also taking into account the practical consequences of the comments noting that many systems automatically populate the § 1026.37(b)(6)(iii) "bullets" when a response of "YES" is disclosed.

Comment app. D-7.v.B, as modified, provides an explanation of how to make the § 1026.37(b)(6)(iii) disclosures when a "YES" response to "Can this amount increase after closing?" is disclosed. The comment explains that years or months may be used for the § 1026.37(b)(6)(iii) disclosures, consistent with comment 37(b)(6)-1. Using months for the disclosures provides more useful information for construction loans in particular, as such loans often do not exceed 12, rather than 24, months. The comment provides examples that, for a 10-month construction loan, the first bullet may disclose, "Adjusts **every mo.** starting in mo. 1" and the second bullet may disclose, "Can go **as high as $ [** insert maximum possible payment**]** in year 1." The comment clarifies the maximum possible payment disclosed would be based on the maximum principal balance that could be outstanding during the construction phase. The adjustment may start in the first month ("mo. 1") because the first payment is not likely to equal the amount computed using the appendix D assumptions when the amounts or timing of

advances is unknown at or before consummation and interest is payable only on the amount advanced for the time it is outstanding.

Comment app. D-7.v.B further explains that as part of the "First Change/Amount" disclosure in the "Adjustable Payment (AP) Table" pursuant to § 1026.37(i)(5)(i), the creditor may omit and leave blank the amount or range corresponding to the first periodic principal and interest payment that may change. The timing of the first change, which is the earliest possible payment that may change under the terms of the legal obligation under comment 37(i)(5)-2, is still disclosed. This disclosure, in particular, reflects a change due to a change in the total amount advanced, but when the amounts or timing of advances is unknown at or before consummation and interest is payable only on the amount advanced for the time it is outstanding, there is not a method for computing the amount at the first change in payment. However, the other disclosures in the "Adjustable Payment (AP) Table" may be made without having to take an unknown quantity into account. For example, the first change may take place at the first payment, the earliest possible payment that may change, because the first payment likely may not equal the amount computed using the appendix D assumption, and the maximum payment would be based on the maximum draw that could be outstanding during the construction phase.

The reference to § 1026.37(c)(2)(i) in proposed comment app. D-7.v.B is also removed in this rule. Because the payment can range as high as the interest on the total amount of the approved loan or as little as $0.00, as noted in the comments, the proposed option to omit the § 1026.37(c)(2)(i) disclosures is not adopted. As discussed below, proposed comment app. D-7.vi adopted in this rule as comment app. D-7.v, which directly addresses the projected payments disclosures for multiple-advance construction loans, more appropriately addresses such issues.

Comment app. D-7.v.C, which addresses the increase in periodic payment disclosures for adjustable-rate construction financing, is modified for consistency with the app. D-7.v changes described above. It applies to both the separate construction disclosures and the combined construction-permanent disclosures, rather than only to separate construction disclosures as proposed. Because the § 1026.37(b)(6)(iii) bullets may be disclosed as provided in comment app. D-7.v.B, comment app. D-7.v.C explains that both the adjustable payment table and the adjustable interest rate table are included in the § 1026.37(b)(6) disclosures for adjustable-rate construction financing.

Finally, because proposed comment app. D-7.iv is not being adopted, a conforming change is being made and proposed comment app. D-7.v is renumbered as comment app. D-7.iv in this rule.

Projected Payments Table

The Bureau's Proposal

Comment app. D-7 currently addresses only the disclosure of a projected payments table under §§ 1026.37(c) and 1026.38(c). Comment app. D-7.i provides an illustration of the construction phase projected payments table disclosure if the creditor elects to disclose the construction and permanent phases as separate transactions. Comment app. D-7.ii provides an illustration of the projected payments table disclosure if the creditor elects to disclose the construction and permanent phases as a single transaction. The proposed rule would have restated comment app. D-7.i as comment app. D-7.vi.A and added clarifying language to specify that, if interest is payable only on the amount actually advanced for the time it is outstanding, the creditor uses the assumption in appendix D, part I.A.1, to determine the amount of the interest-only payment to be made during the construction phase. The proposed comment would have

also clarified that comment app. D-7.i's statement that the creditor must disclose the construction phase transaction as a product with a balloon payment feature, pursuant to §§ 1026.37(a)(10)(ii)(D) and 1026.38(a)(5)(iii), applies unless the transaction has negative amortization, interest-only, or step payment features, consistent with § 1026.37(a)(10)(iii). References to the balloon payment disclosures under §§ 1026.37(b)(5), 1026.37(b)(7)(ii), and 1026.38(b) would have been added to the existing statement that the creditor must disclose the balloon payment in the projected payments table.

The proposed rule would have also restated comment app. D-7.ii as comment app. D-7.vi.B. Language consistent with informal guidance provided by the Bureau would have been added to clarify comment app. D-7.ii's statement that the projected payments table must reflect the interest-only payments during the construction phase in a first column. As proposed, the comment would have explained that the first column also reflects the amortizing payments for the permanent phase if the term of the construction phase is not a full year. This clarification would have ensured consistency with § 1026.37(c)(1)(iii)(B), which requires disclosure of a range of payments if the periodic principal and interest payment or range of payments may change during the same year as the initial periodic payment or range of payments. A clarifying revision would have also been added to proposed comment app. D-7.vi.B to explain that, if interest is payable only on the amount actually advanced for the time it is outstanding, the creditor uses the assumption in appendix D, part II.A.1 to determine the amount of the interest-only payment to be made during the construction phase.

Comments Received

A law firm commenter recommended that the Bureau incorporate the guidance from Section 14.7 of the Bureau's TILA-RESPA Integrated Disclosure Rule Small Entity Compliance

Guide regarding the mortgage insurance and estimated escrow disclosures in the projected payments table for transactions where the terms of the legal obligation for the permanent phase, but not the construction phase, require mortgage insurance or escrow. This commenter also recommended that the Bureau clarify the impact of the mortgage insurance and estimated escrow disclosures on the estimated total monthly payment disclosure where the construction phase is not a full year and, therefore, the first column in the projected payments table discloses a range of payments reflecting the interest-only payments during the construction phase and the amortizing payments for the permanent phase. A vendor group commenter similarly recommended that the rule address the treatment of estimated escrow payments as they relate to single-close construction-to-permanent transactions.

Another law firm commenter stated that the regulation does not explain how to calculate the amount of the periodic payment of "only interest" other than directing creditors to assume that interest is "outstanding at the contract interest rate for the entire construction period." This commenter provided an example of the interest-only monthly payment computed using a daily interest accrual method. The commenter requested that the Bureau validate the formula used to compute the monthly payment.

The Final Rule

As an initial matter, because proposed comment app. D-7.iv is not being adopted, proposed comment app. D-7.vi is renumbered as comment app. D-7.v in this rule. In addition, the description of the § 1026.17(c)(6)(ii) provision that is currently in the introductory paragraph of comment app. D-7, but did not appear in proposed comment app. D-7.vi, is reinstated in the introductory paragraph of comment app. D-7.v in this rule. This revision is necessary to provide the context of the "two alternatives" cited in the following sentence of the comment.

As discussed above concerning proposed comment app. D-7.v, comments noted the actual payment during the construction phase can range as high as the interest on the total amount of the approved loan or as little as $0.00. Nonetheless, current comment app. D-7.i and proposed comment app. D-7.vi provided that the creditor determines the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part I.A.1. To promote consistency and continuity for construction disclosures in the projected payments table, comment app. D-7.v.A as adopted in this final rule continues to require the creditor to determine the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part I.A.1. This means that the interest-only construction payments are not disclosed as a range of payments in the projected payments table. If a separate disclosure is used for the construction phase or if the term of the construction phase is a full year and a combined disclosure for both phases is used, only the payment determined using the appendix D assumption is disclosed in the projected payments table rather than a range of payments between $0 and the interest on the total amount of the approved loan. If a single disclosure is used for both the construction and permanent phases and the term of the construction phase is less than a full year, a range of payments reflecting the payment determined using the appendix D assumption and the amortizing payments that will begin in the first year is disclosed.

The Bureau agrees with the commenters that recommended incorporating additional discussion on disclosing escrow and mortgage insurance that was previously provided in an informal webinar by Bureau staff and incorporated into the Bureau's TILA-RESPA Integrated Disclosure Rule Small Entity Compliance Guide. That discussion is added as comment app. D-7.v.C. Comment app. D-7.v.B is also revised to include a reference to mortgage insurance and

escrow payments, which are reflected in the first column of the projected payments table along with the amortizing payments of the permanent phase if the creditor elects to disclose the construction and permanent phases as a single transaction and the construction phase is not a full year.

With respect to the commenter that requested the Bureau validate the method used to compute the monthly interest payment for disclosure purposes, appendix D does not specify the method used to calculate the interest or monthly payment of the construction transaction. Appendix D only provides assumptions that creditors may use to estimate and disclose the terms of multiple advance construction loans. For example, if interest is payable only on amounts advanced, the estimated interest is computed based on the assumption that one-half the commitment amount is outstanding for the entire construction. The example that follows section I.B.4 of appendix D demonstrates how the interest-only monthly payment may be calculated using the assumptions provided, including the assumed use of monthly periods for calculation purposes. The example in the (B) column states the amount of the calculated monthly payment. The amount of the monthly payment in column (A) may be calculated by dividing the estimated interest by the number of months of the construction transaction in the example. However, these are only examples. Neither the regulation nor appendix D requires the use of monthly periods, or any other particular unit-periods. A creditor may use daily, or other, unit-periods for calculation purposes, as long as the period used is not inconsistent with the terms of the legal obligation between the creditor and the consumer.

Construction Costs as "Other" Costs

The Bureau's Proposal

Proposed comment app. D-7.vii.A would have explained the amount of construction costs is disclosed under the subheading "Other" under § 1026.37(g)(4), consistent with informal guidance provided by the Bureau and the proposed changes to § 1026.37(g)(4). This proposed comment was consistent with proposed amendments to comment 37(g)(4)-4, which would have provided that the amount of construction costs must be disclosed under the subheading "Other" pursuant to § 1026.37(g)(4).

Proposed comment app. D-7.vii.B would have also addressed disclosure of a portion of a construction loan's proceeds that is placed in a reserve or other account at consummation, sometimes referred to as a "construction holdback." Consistent with informal guidance provided by the Bureau, the proposed comment would have explained that the amount of such an account may be disclosed separately from other construction costs or may be included in the amount disclosed for construction costs for purposes of required disclosures and calculations under §§ 1026.37 and 1026.38, at the creditor's option. The comment would also have explained that if the creditor chooses to disclose the amount of loan proceeds placed in a reserve or other account at consummation separately, the creditor may disclose the amount as a separate itemized cost, along with a separate itemized cost for the balance of the construction costs, in accordance with § 1026.37(g)(4), the amount may be labeled with any accurate term in accordance with the clear and conspicuous standard explained at comment 37(f)(5)-1, and the balance of construction costs must exclude the designated amount to avoid double counting.

Comments Received

Comments on proposed comment app. D-7.vii were generally made together with comments submitted on the proposed revision of comments 37(g)(4)-4 and 38(g)(4)-1 and, similarly, were generally unfavorable. Commenters stated that disclosure of construction costs under §§ 1026.37(g)(4) and 1026.38 (g)(4) would make the closing costs in many loans, including construction loans, appear to be enormous, causing confusion. Commenters stated that consumers would be concerned that loans were prohibitively expensive upon seeing such high "closing costs." Commenters also noted that consumer testing had not been conducted for the proposed required disclosures, and disagreed with what they perceived as giving a greater priority to comparability between the Loan Estimate and the Closing Disclosure than to consumer understanding. Significant staff training and systems reprogramming were also cited as concerns by commenters. A fuller presentation of these comments is in the discussion of comment 37(g)(4)-4 above in this preamble.

However, some commenters also pointed out an issue that was specific to proposed comment app. D-7.vii. Two trade association commenters noted that proposed comment app. D-7.vii.A did not expressly refer to the alternative disclosure for transactions without a seller, which was referenced in the proposed commentary to §§ 1026.37(g)(4) and 1026.38 (g)(4). The commenters believed that not including this reference would create legal complexity and may introduce different interpretations between creditors and investors, causing confusion for the industry.

The Final Rule

The Bureau is not adopting comment app. D-7.vii as proposed but is adopting the comment with modifications in response to comments. The changes adopted are consistent with

the changes made to other provisions in this rule that address construction costs. Because the disclosure of construction costs under §§ 1026.37(g)(4) and 1026.38 (g)(4) is not being required as proposed, comment app. D-7.vii as adopted is revised to describe the options available for a creditor to disclose and calculate construction costs rather than focus only on the disclosure of construction costs as "Other costs." In addition, because proposed comment app. D-7.iv is not being adopted in this rule, proposed comment app. D-7.vii is renumbered as comment app. D-7.vi in this rule.

Comment app. D-7.vi, as redesignated, is renamed "Disclosure of construction costs." The reference to construction costs as "other costs" is removed, because construction costs will no longer be disclosed as "other costs" under §§ 1026.37(g)(4) and 1026.38(g)(4). Proposed comment app. D-7.vii.A is redesignated as comment app. D-7.vi.A and revised to provide a description of "construction costs," as costs related to the improvements to be made to the property that the consumer contracts for in connection with the financing transaction and that will be paid in whole or in part with loan proceeds. Proposed comment app. D-7.vii.A is revised to refer to costs for which the consumer contracts in connection with the financing transaction rather than costs the consumer contracts at or before the real estate closing to pay, as proposed, because it may not be clear if there is a "real estate closing" when the financial transaction only involves construction. Even when a "real estate closing" is clearly present, improvements in connection with the financing transaction may not be contracted for until shortly after the closing takes place. In such cases, as long as the creditor knows that financing the improvement is a purpose of the loan proceeds, the construction costs are in connection with the financing transaction.

Further, proposed comment app. D-7.vii.B is redesignated as comment app. D-7.vi.D. Comments app. D-7.vi.B and C as adopted in this rule describe the options available for a creditor to disclose and calculate construction costs under the Loan Estimate and Closing Disclosure, respectively.

Comment app. D-7.vi.B as adopted provides that on the Loan Estimate the creditor factors construction costs into the funds for borrower calculation under § 1026.37(h)(1)(v), or discloses these costs under § 1026.37(h)(2)(iii) in the optional alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate financing. Comment app. D-7.vi.C as adopted in this rule describes the options a creditor has with respect to construction costs on the Closing Disclosure: to disclose these costs under § 1026.38(j)(1)(v) in the summaries of transactions table and factor them into the funds for borrower calculation under § 1026.38(i)(4) and (6) or disclose these costs under § 1026.38(t)(5)(vii)(B) in the optional alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate financing.

A conforming change is made to comment app. D-7.vi.D, which was proposed comment app. D-7.vii.B, by removing the reference to § 1026.37(g)(4) and replacing it with a reference to "the disclosure and calculation options described in comments app. D-7.vi.B and C."

Construction Loan Inspection and Handling Fees

Proposed comment app. D-7.viii provided instructions for the disclosure of construction loan inspection and handling fees consistent with informal guidance provided by the Bureau. The proposed comment explained that comment 4(a)-1.ii.A identifies inspection and handling fees for the staged disbursement of construction loan proceeds as finance charges. The proposed comment also provided cross-references to proposed comments 37(f)-3, 37(f)(6)-3, and 38(f)-2,

which are discussed in the section-by-section analysis above. The Bureau believes that, by directing readers of the appendix D commentary to these other comments, proposed comment app. D-7.viii would facilitate compliance.

The Bureau did not receive any comments on proposed comment app. D-7.viii. Although the Bureau received no comments regarding this proposed comment, as stated in the discussion of comment 37(f)-3, above, the Bureau is finalizing comment app. D-7.viii as proposed with an additional clarification in response to comments received that construction loan inspection and handling fees are loan cost charges that must be added to the "In 5 Years" disclosure under § 1026.37(l)(1) and the total of payments disclosure under § 1026.38(o)(1) because they are disclosed under § 1026.37(f), even when they are disclosed on an addendum. Consistent with a clarification being adopted in comment 37(f)-3, a statement is added that inspection and handling fees include draw fees. In addition, because proposed comment app. D-7.iv is not being adopted in this rule, proposed comment app. D-7.viii is renumbered as comment app. D-7.vii in this rule.

Appendix H—Closed-End Forms and Clauses

The Bureau's Proposal

Pursuant to TILA section 105(b), a creditor is deemed to be in compliance with TILA's disclosure provisions with respect to other than numerical disclosures if the creditor uses any appropriate model form or clause as published by the Bureau.[115] Appendix H to Regulation Z includes blank forms illustrating the master headings, headings, subheadings, etc., that are required by §§ 1026.37 and 1026.38, *i.e.*, forms H-24(A) and (G), H-25(A) and (H) through (J),

[115] 15 U.S.C. 1604(b). A creditor may delete any information which is not required by TILA or rearrange the format, if in making such deletion or rearranging the format, the creditor does not affect the substance, clarity, or meaningful sequence of the disclosure. *Id.*

and H-28(A), (F), (I), and (J) (together, the blank forms). Appendix H to Regulation Z also includes non-blank forms providing samples of disclosures, *i.e.*, forms H-24(B) through (F), H-25(B) through (G), and H-28(B) through (E), (G), and (H) (together, the sample forms).

Current comment app. H-30 provides that forms H-24(A) through (G), H-25(A) through (J), and H-28(A) through (J), *i.e.*, both the blank forms and the sample forms, are model forms for the disclosures required under §§ 1026.37 and 1026.38 and that use of an appropriate model form is mandatory for a transaction that is a federally related mortgage loan (as defined in Regulation X). The Bureau proposed to revise comment app. H-30 to distinguish between the blank forms and the sample forms and to establish that only the blank forms are model forms.

Comments Received

Commenters, including creditors, vendors, trade associations, government sponsored enterprises (GSEs), a title insurance underwriter, and an individual attorney, opposed the proposed revisions to comment app. H-30 that would remove the sample forms' status as model forms, and thus remove the existing safe harbor protection afforded by use of the sample forms. A title insurance underwriter, a trade association, and GSE commenters noted the Bureau's statement in the TILA-RESPA Final Rule that the sample forms "illustrate the disclosures required under §§ 1026.37 and 1026.38, for particular types of transactions."[116] Trade association commenters challenged the Bureau's legal authority to revise comment app. H-30 as proposed and stated that reversing the decision made in the TILA-RESPA Final Rule at this point would appear to be arbitrary and capricious.

[116] 78 FR 79730, 80064 (Dec. 31, 2013).

GSE commenters stated that the sample forms were critical to the GSEs' development of the Uniform Closing Dataset (UCD) and that it is important to preserve the safe harbor protection afforded by use of the sample forms. As an example of the importance of safe harbor protection, a title insurance underwriter cited § 1026.37(b)(6), which, for each amount required to be disclosed by § 1026.37(b)(1) through (3), requires creditors to provide a statement of whether the amount may increase after consummation as an affirmative or negative answer to the question, and under such question disclosed as a subheading, "Can this amount increase after closing?" Moreover, in the case of an affirmative answer, § 1026.37(b)(6) requires creditors to provide additional information specified in § 1026.37(b)(6)(i) through (iii), as applicable. The title insurance underwriter commented that, without the status of the sample forms as model forms, there would be no safe harbor regarding the formatting or organization of the disclosures required under § 1026.37(b)(6). The title insurance underwriter stated that the proposed revisions to comment app. H-30 would increase legal risk for creditors, which could potentially increase costs for consumers.

Some commenters, including a creditor, a title insurance underwriter, a trade association, and a vendor group, requested that the Bureau conduct a systematic review of the sample forms to address errors and for consistency with the final rule. A trade association commenter requested that the Bureau publish more details regarding the hypothetical transactions and assumptions that underlie the various existing sample forms. That commenter further requested that the Bureau develop additional sample forms to demonstrate alternative approaches for disclosing the same hypothetical transactions that underlie the existing sample forms.

The Final Rule

For the reasons discussed below, the Bureau is not adopting the proposed revisions to current comment app. H-30. Accordingly, use of an appropriate sample form, if properly completed with accurate content, constitutes compliance with the requirements of §§ 1026.37 or 1026.38 and associated commentary, as applicable. In part in response to commenters' concerns, the Bureau concludes that maintaining the current text of comment app. H-30 and the sample forms' status as model forms will facilitate compliance and promote greater consistency in formatting the disclosures required under §§ 1026.37 and 1026.38. Such consistency, in turn, can facilitate comparison shopping for consumers.

In finalizing the current proposal, the Bureau has not pursued commenters' suggestions to develop additional sample forms, publish more details regarding the forms' underlying assumptions, and conduct a systematic review of the forms, because such actions would be very time consuming and resource-intensive, whereas the Bureau's focus in this rulemaking is providing additional clarity in an expeditious manner.

VI. Effective Date

A. The Bureau's Proposal

The Bureau proposed an effective date 120 days after publication in the *Federal Register* of any final rule based on the proposal. The Bureau also requested comment on when the changes proposed should be effective. In addition, the Bureau requested comment on whether there is a better or worse time of year for any of the proposed changes to become effective. The Bureau also requested comment on whether specific changes, as detailed in the section-by-section analysis of the proposal, should have a separate effective date and, if so, whether it should be earlier or later than the general effective date and why. In the proposal, the Bureau

stated that it believed that the proposed changes should enable industry to implement the provisions set forth in the TILA-RESPA Rule more cost-effectively and that industry should be able to implement these changes relatively quickly. At the same time, the Bureau stated that it recognized that some of the proposed changes might require changes to systems or procedures.

In addition, the Bureau proposed revisions to comment 1(d)(5)-1 related to the implementation timeframe for the escrow cancellation notice required by § 1026.20(e) and the partial payment disclosure required by § 1026.39(d)(5). Those revisions are discussed further in the section-by-section analysis of § 1026.1(d)(5).

B. Comments Received

In response to the proposed rule, the Bureau received many comments concerning the effective date and implementation period. One consumer group commenter indicated that the changes in the final rule should be applied prospectively only. Thus, the changes should only be effective to applications received on or after a date certain. The commenter stated that such prospective application of the changes would create clarity for enforcement agencies and consumers.

A large number of industry commenters addressed the effective date and implementation period issues. Some industry commenters suggested a single implementation period applicable to all changes made in the final rule. These industry commenters indicated that 120 days was not adequate to implement the changes. They indicated they needed additional time to complete software updates, to conduct testing and self-audits, to update training policies, and to complete staff training. These commenters' suggestions for the implementation period ranged from 6 months to 24 months. One commenter suggested 6 months, one commenter suggested 6 to 9 months, one commenter suggested 18 months, one commenter suggested 24 months, and the

predominance of commenters suggested 12 months. One commenter suggested that the implementation period should extend to the later of (1) 12 months or (2) 180 days after the effective date for all other regulations related to mortgages that have recently been finalized by the Bureau.

Several industry commenters suggested that the implementation timeframe should vary based on the particular change. One commenter suggested a 30-day implementation period for changes requiring little or no reprogramming and a 180-day implementation period for other changes, such as changes to the calculating cash to close table, and the total of payments disclosure. One commenter recommended an earlier implementation period for changes related to the official interpretations, but recommended a voluntary compliance period coupled with a mandatory compliance deadline of 12 months for provisions that it perceived as requiring changes to the forms, including the calculating cash to close table. One commenter indicated that changes that require little reprogramming should be effective immediately upon publication. This commenter indicated that, for other changes, the effective date should be 180 days from publication of the final rule. One commenter suggested that certain changes that do not require software upgrades should be effective upon finalization and asked the Bureau to work with vendors to determine an appropriate effective date for other provisions.

Several industry commenters suggested that the Bureau allow optional compliance. One commenter indicated that an optional compliance period would allow changes to loan origination systems to be "rolled out" prior to the final compliance date, so that all of the changes do not have to occur on one day. This commenter stated that an optional compliance period would ease the transition process for both providers of loan origination systems and for the users of the systems who must learn about and understand the changes being implemented. One commenter

stated that because some of the proposed changes are based on unofficial guidance previously provided by the Bureau's staff, many creditors are already complying with those proposed changes. This commenter indicated that the Bureau should permit optional compliance with the final changes so that creditors already complying with the final changes are not penalized.

Several industry commenters asked that certain changes be made retroactive. For example, one industry commenter indicated that technical, non-substantive changes (*i.e.*, typographical errors, incorrect rule references, and other minor modifications) should be effective as quickly as possible and should apply retroactively. Another industry commenter recommended that certain amendments, such as the proposed changes related to cooperative units and the proposed changes related to the sharing of Closing Disclosures, should be effective for all loan applications received on or after October 3, 2015. One industry commenter recommended retroactivity for proposed changes related to tolerances for the total of payments for transactions for which creditors received applications before the effective date of the tolerance. One industry commenter indicated that, where the Bureau is memorializing unofficial guidance, the provisions should be effective upon rule finalization for all transactions originated on or after October 3, 2015. One industry commenter indicated that the Bureau should provide retroactive protection for clarifications of ambiguous provisions and formal adoption of informal guidance previously provided by the Bureau. This commenter also indicated that any cure or correction provisions that are adopted should be retroactive. The commenter also asked the Bureau to confirm that the Bureau's "good faith" approach to oversight of the TILA-RESPA integrated disclosures is still in effect and will remain in effect during the implementation period after the proposal is finalized.

C. The Final Rule

Overview of the Final Rule

Based on the requests that creditors be allowed to implement some aspects of the final rule soon after issuance, the amendments in the final rule (2017 TILA-RESPA Amendments) will become effective on October 10, 2017. The Bureau is further allowing optional compliance until compliance with the 2017 TILA-RESPA Amendments becomes mandatory. As discussed in more detail below, the Bureau believes that an optional compliance period is the best framework for addressing the specific implementation challenges that are present in this rulemaking as identified in the proposal and in comments. Therefore, compliance with the 2017 TILA-RESPA Amendments is mandatory only with respect to transactions for which a creditor or mortgage broker received an application on or after October 1, 2018 (except for compliance with the escrow cancellation notice required by § 1026.20(e) and the partial payment policy disclosure required by § 1026.39(d)(5) discussed in the section-by-section analysis of § 1026.1(d)(5)). Except with respect to the escrow cancellation notice and the partial payment disclosure requirements, for transactions for which a creditor or mortgage broker received an application prior to October 1, 2018, from the effective date of the 2017 TILA-RESPA Amendments, a person may comply either with Regulation Z (as interpreted by the commentary) as it is in effect (including the amendments set forth in the 2017 TILA-RESPA Amendments) or as it was in effect on October 9, 2017, together with any amendments that become effective other than the 2017 TILA-RESPA Amendments.

After considering the comments, the Bureau believes that it is appropriate for several reasons to require compliance with the 2017 TILA-RESPA Amendments only with respect to transactions for which a creditor or mortgage broker received an application on or after October

1, 2018 (except for compliance with the escrow cancellation notice and partial payment policy disclosure requirements discussed above with which compliance will become mandatory on October 1, 2018, regardless of when an application was received). The final rule will require several changes to systems used to produce the TILA-RESPA integrated disclosure forms. The Bureau believes that mandating compliance with the 2017 TILA-RESPA Amendments only with respect to transactions for which a creditor or mortgage broker received an application on or after October 1, 2018, will provide creditors sufficient time to complete software updates, to conduct testing and self-audits, to update training policies, and to complete staff training that may be needed to implement the changes in the final rule. The Bureau does not believe that a longer timeframe, as requested by a small number of commenters, is necessary given the nature of the changes in this final rule.

The Bureau believes that it is appropriate to allow optional compliance with the 2017 TILA-RESPA Amendments for several reasons. As the Bureau noted in its proposal, this final rule does not reopen major policy decisions made in the TILA-RESPA Final Rule. This final rule generally clarifies ambiguous provisions, including by memorializing past informal guidance, and makes technical amendments. The Bureau believes many creditors, either in reliance on informal guidance or otherwise, currently may be complying with some of the final rule's clarifications. At the same time, given that the Bureau is clarifying existing ambiguity, the Bureau recognizes that not all creditors have already adopted processes in compliance with the final rule and that creditors are likely at various points along a continuum of adopting practices in compliance with the final rule. Therefore, the Bureau believes it reasonable to grant creditors an interim period in which to phase in their compliance with the final rule, in accordance with their individual circumstances. As to the purely technical and clarifying amendments, the

Bureau does not believe that this phased-in optional compliance period poses any risks of consumer harm.

The final rule also contains a few substantive changes to the TILA-RESPA Rule in a limited number of situations in which the Bureau has identified potential discrete solutions to specific implementation challenges. While the Bureau believes that these limited substantive changes will generally benefit consumers and industry alike by providing greater clarity for implementation, the Bureau also does not believe that permitting a phased-in optional compliance period for these limited substantive changes is likely to cause consumer harm. These substantive changes are limited and do not affect the content of the disclosures giving rise to statutory damages. Moreover, the changes to the disclosures do not alter the bottom-line dollar disclosures consumers are most likely to rely on in shopping for and closing on a mortgage, thereby minimizing the risk of consumer harm during the optional compliance period. For example, a creditor phasing in changes relating to the calculating cash to close table would nonetheless be required to disclose a final cash to close amount that is consistent with the summaries of transactions table. In general, the Bureau believes, therefore, that the minor variations in disclosure possible during the limited duration of the optional compliance period will not cause significant consumer confusion, whether such minor variations occur as between a Loan Estimate and Closing Disclosure issued by the same creditor or between Loan Estimates issued by two different creditors, although creditors may not phase in compliance in a way that violates provisions of Regulation Z (as interpreted by the commentary) unchanged by this final rule, as discussed further below in the *Details of the Final Rule* section.

The Bureau also believes that industry's overall compliance with the TILA-RESPA Rule will be facilitated by the implementation of these limited substantive changes and that therefore

there is both a consumer and industry benefit to allowing creditors to implement these changes as quickly as possible after the effective date. At the same time, the commenters clearly indicated that not all creditors will be able to implement these changes on the same schedule. The flexibility afforded under the optional compliance period may help creditors implement the provisions of the final rule more quickly and easily.

For these reasons, the Bureau agrees with several commenters that it is appropriate to allow creditors flexibility to comply with the 2017 TILA-RESPA Amendments all at one time, or to phase in the changes prior to the mandatory compliance date. After considering the comments, the Bureau does not believe that it would be optimal in these circumstances for the Bureau to impose a detailed schedule for creditors to phase in the changes required by this final rule, for example by establishing multiple effective dates that are staggered over time. Thus, after the effective date of the 2017 TILA-RESPA Amendments, creditors generally may phase in the 2017 TILA-RESPA Amendments as best comports with their business models, whether based on application dates for specific provisions or even during the course of a transaction, although such phased-in compliance may not place the creditor in violation of provisions of Regulation Z (as interpreted by the commentary) unchanged by this final rule, as discussed further below in the *Details of the Final Rule* section. The Bureau bases this decision on the general clarifying purpose of the final rule coupled with the limited, technical nature of the few substantive changes. Such expansive flexibility during the optional compliance period may not be appropriate in the context of other final rules with more significant substantive changes, more novel (as opposed to clarifying) amendments, or provisions whose staggered implementation posed a greater risk of consumer harm. Additionally, this approach may not be appropriate in

circumstances where the provisions of the final rule were sufficiently related that implementing them piecemeal would cause significant conflict with either the existing rule or the final rule.

With respect to some commenters' requests that the Bureau make provisions of the final rule retroactive, the Bureau declines to do so. Retroactive rulemaking is disfavored by the courts, and commenters have not established why it would be appropriate here.

As discussed above, one commenter asked the Bureau to confirm that the Bureau's "good faith" approach to oversight of the TILA-RESPA integrated disclosures is still in effect and will remain in effect during the implementation period after the proposal is finalized. The Director of the Bureau publicly stated, in the early days after the TILA-RESPA Final Rule became effective in 2015, that the Bureau's oversight would be sensitive to the progress made by those entities that have squarely focused on making good-faith efforts to come into compliance with the TILA-RESPA Final Rule on time.[117] The Bureau will take this approach in its oversight of efforts by creditors to come into compliance by the mandatory compliance date with the changes in this final rule.

Details of the Final Rule

After considering the comments received and for the reasons discussed above, the Bureau is establishing an effective date, optional compliance provision, and mandatory compliance date for this final rule. Comment 1(d)(5)-2 sets forth the effective date, the optional compliance provision, and the mandatory compliance date.

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[117] *See, e.g.*, Letter from Director Richard Cordray, CFPB, to Industry Trades (April 28, 2015); Letter from Director Richard Cordray, CFPB, to Representatives Andy Barr and Carolyn B. Maloney, U.S. House of Representatives (June 3, 2015).

The effective date is 60 days after publication in the *Federal Register*. Consistent with the practice of other agencies in similar contexts, the 2017 TILA-RESPA Amendments will be incorporated into the Code of Federal Regulations on the effective date, but the amendments will not yet be mandatory. Instead, compliance with the July 2017 TILA-RESPA Amendments is only mandatory with respect to transactions for which a creditor or mortgage broker received an application on or after October 1, 2018 (except for compliance with the escrow cancellation notice required by § 1026.20(e) and the partial payment policy disclosure required by § 1026.39(d)(5) discussed in comment 1(d)(5)-1.iv, which, starting October 1, 2018, apply without regard to when the application for the covered loan was received).

Except as discussed in comment 1(d)(5)-1.iv with respect to the escrow cancellation notice and the partial payment disclosure, for transactions for which a creditor or mortgage broker received an application prior to October 1, 2018, from the effective date of the 2017 TILA-RESPA Amendments, a person has the option of complying with Regulation Z (as interpreted by the commentary) either as it is in effect or as it was in effect on October 9, 2017, together with any amendments that become effective other than the 2017 TILA-RESPA Amendments. With respect to transactions subject to the optional compliance provision, this means that an act or omission violates Regulation Z (as interpreted by the commentary) only if the act or omission violates *both*: (1) Regulation Z (as interpreted by the commentary), as it is in effect; *and* (2) Regulation Z (as interpreted by the commentary), as it was in effect on October 9, 2017, together with any amendments that become effective other than the 2017 TILA-RESPA Amendments. Consistent with § 1026.25, a creditor must keep records of such compliance and permit the agency responsible for enforcing Regulation Z with respect to that creditor to inspect those records.

Under the optional compliance provision, as discussed above, a creditor is permitted to comply with the 2017 TILA-RESPA Amendments all at one time, or to phase in the changes prior to the mandatory compliance date whether based on application dates or during the course of a transaction, although such phased-in compliance may not place the creditor in violation of provisions of Regulation Z (as interpreted by the commentary) unchanged by this final rule, as discussed further below. For example, current § 1026.37(l)(3) requires creditors to disclose the total interest percentage (TIP) and provides that the TIP is the total amount of interest that the consumer will pay over the life of the loan, expressed as a percentage of the principal of the loan. Among other things, the final rule revises comment 37(l)(3)-1 to state that prepaid interest that is disclosed as a negative number under §§ 1026.37(g)(2) or 1026.38(g)(2) must be included as a negative value when calculating the TIP. With respect to transactions subject to the optional compliance provision, a creditor may either (1) include negative prepaid interest into the TIP calculation as a negative value as discussed in final comment 37(l)(3)-1; or (2) not include negative prepaid interest into the TIP calculation because the current regulation and commentary do not restrict how a creditor factors negative prepaid interest into the TIP calculation. As another example, current § 1026.38(e) and 1026.38(i) provide that, in the Closing Disclosure's calculating cash to close table, the amounts that are required to be disclosed under the subheading "Loan Estimate" are the amounts disclosed on the Loan Estimate. Sections 1026.38(e) and 1026.38(i) do not specify which Loan Estimate's amounts should be used if multiple Loan Estimates have been provided. The final rule adds comments 38(e)-6 and 38(i)-5 to specify that the amounts required to be disclosed under the subheading "Loan Estimate" on the Closing Disclosure's calculating cash to close table are the amounts disclosed on the most recent Loan Estimate provided to the consumer. With respect to transactions subject to the

optional compliance provision, a creditor may disclose, under the subheading "Loan Estimate" on the Closing Disclosure's calculating cash to close table, the amounts from any Loan Estimate provided to the consumer, including the most recent Loan Estimate provided to the consumer.

Notwithstanding the flexibility discussed above to phase in the 2017 TILA-RESPA Amendments prior to the mandatory compliance date, creditors cannot phase in the amendments in a way that violates provisions of Regulation Z (as interpreted by the commentary) unchanged by this final rule, because doing so would not comply with either of the permissible versions of Regulation Z (as interpreted by the commentary). For example, a creditor could not, during the optional compliance period, provide a RESPA good faith estimate followed by a Closing Disclosure to a consumer in a transaction secured by a cooperative unit, even though the creditor is permitted to provide either the RESPA disclosures (the good faith estimate and settlement statement) or the Integrated Disclosures (the Loan Estimate and Closing Disclosure) for transactions secured by cooperative units where State law does not treat the cooperative unit as real property during the optional compliance period. The creditor could not provide a RESPA good faith estimate and then provide a Closing Disclosure (instead of a RESPA settlement statement) because, in doing so, the creditor would violate § 1026.38(i) in both permissible versions of Regulation Z, which requires that information that was disclosed on the Loan Estimate be included on the Closing Disclosure. Thus, during the optional compliance period, if State law provides that a transaction secured by a cooperative unit is not a transaction secured by real property, for a particular cooperative transaction, if the creditor provides a RESPA good faith estimate, the creditor would be required to provide a RESPA settlement statement rather than a Closing Disclosure. Conversely, if the creditor provides a Loan Estimate for a particular cooperative transaction described above, the creditor would be required to provide a Closing

Disclosure. At the same time, creditors could still choose to phase in compliance for other 2017 TILA-RESPA Amendments in cooperative unit transactions that are disclosed using the Loan Estimate and the Closing Disclosure, even within the course of a transaction, for example, with respect to the provisions relating to the calculating cash to close table, so long as doing so complies with either of the two permissible versions of Regulation Z (as interpreted by the commentary).

VII. Dodd-Frank Act Section 1022(b)(2) Analysis

A. Overview

In developing the final rule, the Bureau has considered the potential benefits, costs, and impacts.[118] The Bureau has consulted, or offered to consult with, the prudential regulators, the Securities and Exchange Commission, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Federal Trade Commission, the U.S. Department of Veterans Affairs, the U.S. Department of Agriculture, and the Department of the Treasury, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

This final rule makes three substantive changes to the TILA-RESPA Final Rule, along with a number of technical corrections and clarifications: tolerances for the total of payments, adjustment of the partial exemption under § 1026.3(h), and coverage of loans secured by cooperative units, whether or not treated as real property under State law. The potential benefits

[118] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

and costs of the provisions contained in this final rule are evaluated relative to the baseline where the current provisions of the TILA-RESPA Rule remain in place.

The first of these three substantive changes provides tolerances for the total of payments that parallel the existing tolerances for the finance charge. Prior to the TILA-RESPA Final Rule, the calculation of the total of payments was based directly on the finance charge. As a result, the disclosure of the total of payments was generally subject to the statutory tolerances for the finance charge and disclosures affected by the finance charge. The Bureau modified the calculation of the total of payments in the TILA-RESPA Final Rule, which may have introduced ambiguity as to whether the total of payments is a disclosure affected by the disclosed finance charge and therefore subject to the same tolerances. To apply the same tolerances for accuracy of the disclosed finance charge and other disclosures affected by the disclosed finance charge unambiguously to the total of payments on the Closing Disclosure, the Bureau revises § 1026.38(o)(1).

The second change revises the partial exemption from the TILA-RESPA integrated disclosure requirements at § 1026.3(h), which, as cross-referenced at Regulation X § 1024.5(d)(2), also provides an exemption from the RESPA disclosures. If a creditor is not subject to the TILA-RESPA integrated disclosure requirements and is not eligible for the partial exemption under § 1026.3(h), the creditor must provide the pre-existing RESPA disclosures. The partial exemption often applies to low-cost down payment or other types of housing assistance loans originated by housing finance agencies (HFAs) or by creditors that partner with HFAs and originate loans in accord with HFA guidelines. The partial exemption was designed to facilitate such low cost lending by HFAs and their partners in the recognition that such loans provide consumers with significant benefits.

The Bureau has heard from HFAs and others that, in some jurisdictions, the applicability of the partial exemption has been limited. Under the current rule, in order to satisfy the criteria for the partial exemption, the total costs of the loan payable by the consumer at consummation, including transfer taxes and recording fees, cannot exceed 1 percent of the total amount of credit extended. Many HFAs have told the Bureau that, due to the increase in both transfer taxes and recording fees in recent years and the small size of many of these housing assistance loans, often less than $5,000, these loans often have upfront costs exceeding the 1-percent threshold. Consequently, these loans do not meet criteria for the partial exemption in current § 1026.3(h)(5) and are not eligible for the partial exemption from the RESPA disclosures in Regulation X § 1024.5(d)(2). This means that for loans that are not subject to the TILA-RESPA integrated disclosure requirements, creditors must continue to provide the RESPA disclosures.

Following the introduction of the TILA-RESPA integrated disclosures, some vendors and loan originator systems no longer support the RESPA disclosures. Although the RESPA disclosures are still required for other loan types, such as reverse mortgages, many lenders do not offer such products, and those lenders that do offer such products often do so through separate divisions that do not engage with, or operate on separate systems that do not support, housing assistance loan programs. In addition, software systems used by HFAs may no longer support the RESPA disclosures, making it necessary to complete RESPA disclosures manually. Manual completion of the disclosures, while compliant, may be costly and error-prone. As a result of these additional difficulties, some creditors may be less willing to work with HFAs and other organizations to continue providing these housing assistance loans. As revised, § 1026.3(h)(5) makes explicit that transfer taxes are among the permissible costs for these loans and provides that neither transfer taxes nor recording fees count towards the 1-percent threshold, thus

expanding the scope of the partial exemption for the low-cost and deferred or contingent repayment lending envisioned by § 1026.3(h). Additionally, the final rule revises § 1026.3(h)(6) to permit creditors to provide either the TILA disclosures described in § 1026.18 or the Loan Estimate and Closing Disclosure described in § 1026.19(e) and (f), respectively, to meet the criteria for the partial exemption. The Bureau believes the flexibility provided by final § 1026.3(h)(6) will further expand access to the partial exemption.

The third change is to include loans secured by cooperative units in the TILA-RESPA Rule's coverage, whether or not cooperative units are treated as real property under applicable State law. As discussed in the section-by-section analysis of § 1026.19, State law varies, sometimes even within the same State, as to whether cooperative units are treated as real property. This change creates uniform application where integrated disclosures are issued for all covered transactions secured by cooperative units.

The final rule also includes a variety of technical corrections and clarifications, some of which may require one-time reprogramming costs, but otherwise the Bureau generally believes those changes to be burden reducing or burden neutral.

B. Potential Benefits and Costs to Consumers and Covered Persons

Tolerance for Total of Payments

Under this final rule, the same tolerances apply to the total of payments as apply, by statute, to the finance charge and disclosures affected by the finance charge. Because the existing rule does not provide for a tolerance for the total of payments, other than to the extent a total of payments misdisclosure results from a misdisclosure of the finance charge, under the existing rule, any misdisclosure of the total of payments that does not result from a misdisclosure of the finance charge could potentially subject a creditor to liability under TILA.

The Bureau believes that the adopted change will benefit creditors, in the limited circumstances where a small, within tolerance, misdisclosure in the total of payments occurs. Creditors and their assignees would be less likely to face litigation, and its accompanying costs and risks, over such errors.

The Bureau does not believe that creditors would bear any associated costs from the adopted provision, aside from one-time reprogramming costs, for those creditors that use proprietary software systems.

To the extent that creditors restrict credit in response to additional litigation or secondary market risks given the absence of explicit tolerances for the total of payments, the adopted provision would benefit consumers in the form of expanded credit or a reduced cost of credit.

Excluding recording fees and transfer taxes from § 1026.3(h) exemption requirements

Under this final rule, recording fees and transfer taxes will be excluded from the calculation of the 1-percent threshold (as specified in § 1026.3(h)(5)). As a result, the § 1026.3(h) partial exemption will be available for some loans that currently do not satisfy § 1026.3(h)(5) but satisfy the other provisions of § 1026.3(h). Additionally, under this final rule, creditors issuing loans that satisfy the criteria in § 1026.3(h), and thus qualify for the partial exemption in Regulation X § 1024.5(d)(2), will be exempted from providing the RESPA disclosures and will have the choice to provide either a TILA disclosure (described in § 1026.18) or a Loan Estimate and Closing Disclosure (described in § 1026.19(e) and (f), respectively).

These revisions benefit creditors by allowing them to provide the more streamlined disclosures described in § 1026.18 or the Loan Estimate and Closing Disclosure described in § 1026.19(e) and (f), respectively (without also having to provide the special information booklet described in § 1026.19(g)), in connection with loans that satisfy the criteria for the partial

exemption at § 1026.3(h). In particular, more housing assistance loans originated by HFAs and others will qualify for the partial exemption, thereby reducing costs incurred under the baseline (described above), and increasing the wiliness of creditors to work with HFAs and other organizations in providing housing assistance loans. The Bureau does not believe that creditors would bear any associated costs from the adopted amendments to § 1026.3(h).

This provision may benefit consumers by making down payment assistance loans and other non-interest bearing housing assistance loans potentially more accessible. While the Bureau notes that the § 1026.18 disclosures do not require the provision of the full level of detailed disclosures required either by RESPA or under the TILA-RESPA integrated disclosure requirements, the loans eligible for the partial exemption at § 1026.3(h) generally have a simpler cost structure that is adequately communicated by the § 1026.18 TILA disclosures.

Including cooperatives in the coverage of the TILA-RESPA Final Rule

Under this final rule, consumer credit transactions secured by a cooperative unit will be covered by the TILA-RESPA Rule, whether or not applicable State law treats cooperative units as real property. The adopted provision benefits creditors who originate mortgages on cooperative units by eliminating any uncertainty regarding the applicable disclosures. Creditors who currently issue RESPA disclosures for loans secured by cooperative units would have to switch to the integrated disclosure on such loans. The Bureau believes the cost of such change to be minimal: the systems that generate the integrated disclosures must already be in place for other types of property.

The adopted provision may benefit consumers who borrow against cooperative units in States where such units are treated as personal property under applicable State law. Such

consumers will receive an integrated disclosure which, the Bureau believes, is better designed to communicate cost information than is the legacy RESPA disclosure.

Other technical corrections and clarifications

This final rule contains numerous technical corrections and clarifications. Although some of them may require a one-time reprogramming cost, the Bureau does not believe these changes will increase ongoing origination costs. The Bureau believes creditors will generally benefit from the adopted changes through greater clarity, and in some cases, additional optionality, regarding compliance with existing law.

Consumers would benefit from these changes by receiving more timely and more accurate disclosures.

C. Impact on Covered Persons with No More Than $10 Billion in Assets

The Bureau believes that covered persons with no more than $10 billion in assets will not be differentially affected by any of the adopted provisions. One possible exception is creditors that provide loans that satisfy criteria in § 1026.3(h): if the majority of such creditors have $10 billion or less in assets, the exemption of recording fees and transfer taxes from the § 1026.3(h)(5) 1-percent threshold and the permissible provision of the Loan Estimate and Closing Disclosure under § 1026.3(h)(6) would create a disproportional benefit for covered persons in that asset category.

D. Impact on Access to Credit

As pointed out above, the exemption of recording fees and transfer taxes from the § 1026.3(h)(5) 1-percent threshold and the increased flexibility in the permitted disclosures for loans that satisfy the criteria in § 1026.3(h) has the potential to improve access to housing assistance loans for consumers. Generally, a reduction in ambiguity regarding compliance with

the law may potentially improve access to credit for all consumers. None of the changes is likely to have an adverse impact on access to credit.

E. Impact on Rural Areas

The Bureau believes that none of the changes is likely to have an adverse impact on consumers in rural areas.

VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (the RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small nonprofit organizations. The RFA defines a "small business" as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.

The undersigned certified that the proposal would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not required. The

Bureau's conclusion that the rule will not have a significant economic impact on a substantial number of small entities is unchanged. Therefore, a FRFA is not required.[119]

Accordingly, the undersigned hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq*.), Federal agencies are generally required to seek the Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. The collections of information related to Regulations Z and X have been previously reviewed and approved by OMB in accordance with the PRA and assigned OMB Control Number 3170-0015 (Regulation Z) and 3170-0016 (Regulation X). Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this proposed rule will not impose any significant change in ongoing the paperwork burden on covered persons. Some of the changes would require a one-time reprogramming cost.

List of Subjects in 12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

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[119] 5 U.S.C. 605(b).

Authority and Issuance

For the reasons set forth above, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603-2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq*.

Subpart A—General

2. Section 1026.1 is amended by revising paragraph (d)(5) to read as follows:

§ 1026.1 Authority, purpose, coverage, organization, enforcement, and liability.

* * * * *

(d) * * *

(5) Subpart E contains special rules for mortgage transactions. Section 1026.32 requires certain disclosures and provides limitations for closed-end credit transactions and open-end credit plans that have rates or fees above specified amounts or certain prepayment penalties. Section 1026.33 requires special disclosures, including the total annual loan cost rate, for reverse mortgage transactions. Section 1026.34 prohibits specific acts and practices in connection with high-cost mortgages, as defined in § 1026.32(a). Section 1026.35 prohibits specific acts and practices in connection with closed-end higher-priced mortgage loans, as defined in § 1026.35(a). Section 1026.36 prohibits specific acts and practices in connection with an extension of credit secured by a dwelling. Sections 1026.37 and 1026.38 set forth special disclosure requirements for certain closed-end transactions secured by real property or a cooperative unit, as required by § 1026.19(e) and (f).

* * * * *

3. Section 1026.3 is amended by revising paragraph (h) introductory text and paragraphs (h)(5) and (6) to read as follows:

§ 1026.3 Exempt transactions.

* * * * *

(h) *Partial exemption for certain mortgage loans*. The special disclosure requirements in § 1026.19(g) and, unless the creditor chooses to provide the disclosures described in § 1026.19(e) and (f), in § 1026.19(e) and (f) do not apply to a transaction that satisfies all of the following criteria:

* * * * *

(5)(i) The costs payable by the consumer in connection with the transaction at consummation are limited to:

(A) Recording fees;

(B) Transfer taxes;

(C) A bona fide and reasonable application fee; and

(D) A bona fide and reasonable fee for housing counseling services; and

(ii) The total of costs payable by the consumer under paragraph (h)(5)(i)(C) and (D) of this section is less than 1 percent of the amount of credit extended; and

(6) The following disclosures are provided:

(i) Disclosures described in § 1026.18 that comply with this part; or

(ii) Alternatively, disclosures described in § 1026.19(e) and (f) that comply with this part.

Subpart C—Closed-End Credit

4. Section 1026.19 is amended by revising the paragraph (e) heading, paragraphs (e)(1)(i), (e)(3)(iii), (e)(3)(iv)(E) and (F), the paragraph (f) heading, and paragraphs (f)(1)(i), (f)(4)(i), and (g)(1) to read as follows:

§ 1026.19 Certain mortgage and variable-rate transactions.

* * * * *

(e) *Mortgage loans—early disclosures*—(1) *Provision of disclosures*—(i) *Creditor*. In a closed-end consumer credit transaction secured by real property or a cooperative unit, other than a reverse mortgage subject to § 1026.33, the creditor shall provide the consumer with good faith estimates of the disclosures in § 1026.37.

* * * * *

(3) * * *

(iii) *Variations permitted for certain charges*. An estimate of any of the charges specified in this paragraph (e)(3)(iii) is in good faith if it is consistent with the best information reasonably available to the creditor at the time it is disclosed, regardless of whether the amount paid by the consumer exceeds the amount disclosed under paragraph (e)(1)(i) of this section. For purposes of paragraph (e)(1)(i) of this section, good faith is determined under this paragraph (e)(3)(iii) even if such charges are paid to the creditor or affiliates of the creditor, so long as the charges are bona fide:

(A) Prepaid interest;

(B) Property insurance premiums;

(C) Amounts placed into an escrow, impound, reserve, or similar account;

(D) Charges paid to third-party service providers selected by the consumer consistent with paragraph (e)(1)(vi)(A) of this section that are not on the list provided under paragraph (e)(1)(vi)(C) of this section; and

(E) Property taxes and other charges paid for third-party services not required by the creditor.

(iv) * * *

(E) *Expiration*. The consumer indicates an intent to proceed with the transaction more than 10 business days, or more than any additional number of days specified by the creditor before the offer expires, after the disclosures required under paragraph (e)(1)(i) of this section are provided pursuant to paragraph (e)(1)(iii) of this section.

(F) *Delayed settlement date on a construction loan*. In transactions involving new construction, where the creditor reasonably expects that settlement will occur more than 60 days after the disclosures required under paragraph (e)(1)(i) of this section are provided pursuant to paragraph (e)(1)(iii) of this section, the creditor may provide revised disclosures to the consumer if the original disclosures required under paragraph (e)(1)(i) of this section state clearly and conspicuously that at any time prior to 60 days before consummation, the creditor may issue revised disclosures. If no such statement is provided, the creditor may not issue revised disclosures, except as otherwise provided in paragraph (e)(3)(iv) of this section.

* * * * *

(f) *Mortgage loans—final disclosures*—(1) *Provision of disclosures*—(i) *Scope.* In a transaction subject to paragraph (e)(1)(i) of this section, the creditor shall provide the consumer with the disclosures required under § 1026.38 reflecting the actual terms of the transaction.

* * * * *

(4) *Transactions involving a seller*—(i) *Provision to seller*. In a transaction subject to paragraph (e)(1)(i) of this section that involves a seller, the settlement agent shall provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction.

* * * * *

(g) *Special information booklet at time of application*—(1) *Creditor to provide special information booklet*. Except as provided in paragraphs (g)(1)(ii) and (iii) of this section, the creditor shall provide a copy of the special information booklet (required pursuant to section 5 of the Real Estate Settlement Procedures Act (12 U.S.C. 2604) to help consumers applying for federally related mortgage loans understand the nature and cost of real estate settlement services) to a consumer who applies for a consumer credit transaction secured by real property or a cooperative unit.

(i) The creditor shall deliver or place in the mail the special information booklet not later than three business days after the consumer's application is received. However, if the creditor denies the consumer's application before the end of the three-business-day period, the creditor need not provide the booklet. If a consumer uses a mortgage broker, the mortgage broker shall provide the special information booklet and the creditor need not do so.

(ii) In the case of a home equity line of credit subject to § 1026.40, a creditor or mortgage broker that provides the consumer with a copy of the brochure entitled "When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit," or any successor brochure issued by the Bureau, is deemed to be in compliance with this section.

(iii) The creditor or mortgage broker need not provide the booklet to the consumer for a transaction, the purpose of which is not the purchase of a one-to-four family residential property, including, but not limited to, the following:

(A) Refinancing transactions;

(B) Closed-end loans secured by a subordinate lien; and

(C) Reverse mortgages.

* * * * *

5. Section 1026.23 is amended by revising paragraphs (g)(1) and (2) and (h)(2) to read as follows:

§ 1026.23 Right of rescission.

* * * * *

(g) *Tolerances for accuracy*—(1) *One-half of 1 percent tolerance.* Except as provided in paragraphs (g)(2) and (h)(2) of this section:

(i) The finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(A) Is understated by no more than 1⁄2 of 1 percent of the face amount of the note or $100, whichever is greater; or

(B) Is greater than the amount required to be disclosed.

(ii) The total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of this section if the disclosed total of payments:

(A) Is understated by no more than 1⁄2 of 1 percent of the face amount of the note or $100, whichever is greater; or

(B) Is greater than the amount required to be disclosed.

(2) *One percent tolerance.* In a refinancing of a residential mortgage transaction with a new creditor (other than a transaction covered by § 1026.32), if there is no new advance and no consolidation of existing loans:

(i) The finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(A) Is understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or

(B) Is greater than the amount required to be disclosed.

(ii) The total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of this section if the disclosed total of payments:

(A) Is understated by no more than 1 percent of the face amount of the note or $100, whichever is greater; or

(B) Is greater than the amount required to be disclosed.

(h) * * *

(2) *Tolerance for disclosures.* After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation:

(i) The finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

(A) Is understated by no more than $35; or

(B) Is greater than the amount required to be disclosed.

(ii) The total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of this section if the disclosed total of payments:

(A) Is understated by no more than $35; or

(B) Is greater than the amount required to be disclosed.

Subpart D—Miscellaneous

6. Section 1026.25 is amended by revising the paragraph (c)(1) heading to read as follows:

§ 1026.25 Record retention.

* * * * *

(c) * * *

(1) *Records related to requirements for loans secured by real property or a cooperative unit*—* * *

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

7. Section 1026.37 is amended by revising paragraphs (b) introductory text, (b)(1), (c)(5)(i), (d)(2) introductory text, (d)(2)(i), (h)(1)(i), (h)(1)(iii), (h)(1)(v), (h)(1)(vii), (h)(2) introductory text, (h)(2)(ii) and (iii), and (o)(4) to read as follows:

§ 1026.37 Content of disclosures for certain mortgage transactions (Loan Estimate).

* * * * *

(b) *Loan terms.* A separate table under the heading "Loan Terms" that contains the following information and that satisfies the following requirements:

(1) *Loan amount.* The total amount the consumer will borrow, as reflected by the face amount of the note, labeled "Loan Amount."

* * * * *

(c) * * *

(5) * * *

(i) The taxable assessed value of the real property or cooperative unit securing the transaction after consummation, including the value of any improvements on the property or to be constructed on the property, if known, whether or not such construction will be financed from the proceeds of the transaction, for property taxes; and

* * * * *

(d) * * *

(2) *Optional alternative table for transactions without a seller or for simultaneous subordinate financing*. For transactions that do not involve a seller or for simultaneous subordinate financing, instead of the amount and statements described in paragraph (d)(1)(ii) of this section, the creditor may alternatively disclose, using the label "Cash to Close":

(i) The amount calculated in accordance with paragraph (h)(2)(iv) of this section;

* * * * *

(h) * * *

(1) * * *

(i) *Total closing costs*. The amount disclosed under paragraph (g)(6) of this section, labeled "Total Closing Costs";

* * * * *

(iii) *Down payment and other funds from borrower*. Labeled "Down Payment/Funds from Borrower":

(A)(*1*) In a purchase transaction as defined in paragraph (a)(9)(i) of this section, the amount determined by subtracting the sum of the loan amount disclosed under paragraph (b)(1) of this section and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) from the sale price of the property disclosed under paragraph (a)(7)(i) of this section, except as required by paragraph (h)(1)(iii)(A)(*2*) of this section;

(*2*) In a purchase transaction as defined in paragraph (a)(9)(i) of this section that is a simultaneous subordinate financing transaction or that involves improvements to be made on the property, or when the sum of the loan amount disclosed under paragraph (b)(1) of this section and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) exceeds the sale price of the property disclosed under paragraph (a)(7)(i) of this section, the amount of estimated funds from the consumer as determined in accordance with paragraph (h)(1)(v) of this section; or

(B) In all transactions not subject to paragraph (h)(1)(iii)(A) of this section, the amount of estimated funds from the consumer as determined in accordance with paragraph (h)(1)(v) of this section;

* * * * *

(v) *Funds for borrower*. The amount of funds for the consumer, labeled "Funds for Borrower." The amount of the down payment and other funds from the consumer disclosed under paragraph (h)(1)(iii)(A)(*2*) or (h)(1)(iii)(B) of this section, as applicable, and of funds for the consumer disclosed under this paragraph (h)(1)(v), are determined by subtracting the sum of the loan amount disclosed under paragraph (b)(1) of this section and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) (excluding any

closing costs financed disclosed under paragraph (h)(1)(ii) of this section) from the total amount of all existing debt being satisfied in the transaction;

(A) If the calculation under this paragraph (h)(1)(v) yields an amount that is a positive number, such amount is disclosed under paragraph (h)(1)(iii)(A)(*2*) or (h)(1)(iii)(B) of this section, as applicable, and $0 is disclosed under this paragraph (h)(1)(v);

(B) If the calculation under this paragraph (h)(1)(v) yields an amount that is a negative number, such amount is disclosed under this paragraph (h)(1)(v) as a negative number, and $0 is disclosed under paragraph (h)(1)(iii)(A)(*2*) or (h)(1)(iii)(B) of this section, as applicable;

(C) If the calculation under this paragraph (h)(1)(v) yields $0, then $0 is disclosed under paragraph (h)(1)(iii)(A)(*2*) or (h)(1)(iii)(B) of this section, as applicable, and under this paragraph (h)(1)(v);

* * * * *

(vii) *Adjustments and other credits*. The amount of all loan costs determined under paragraph (f) of this section and other costs determined under paragraph (g) of this section that are paid by persons other than the loan originator, creditor, consumer, or seller, together with any other amounts not otherwise disclosed under paragraph (f) or (g) of this section that are required to be paid by the consumer at closing in a transaction disclosed under paragraph (h)(1)(iii)(A)(*1*) of this section or pursuant to a purchase and sale contract, labeled "Adjustments and Other Credits"; and

* * * * *

(2) *Optional alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate financing*. For transactions that do not involve a seller or for simultaneous subordinate financing, instead of the table described in paragraph (h)(1) above, the

creditor may alternatively provide, in a separate table, under the master heading "Closing Cost Details," under the heading "Calculating Cash to Close," the total amount of cash or other funds that must be provided by the consumer at consummation with an itemization of that amount into the following component amounts:

* * * * *

(ii) *Total closing costs*. The amount disclosed under paragraph (g)(6) of this section, disclosed as a negative number if the amount disclosed under paragraph (g)(6) of this section is a positive number and disclosed as a positive number if the amount disclosed under paragraph (g)(6) of this section is a negative number, labeled "Total Closing Costs";

(iii) *Payoffs and payments*. The total amount of payoffs and payments to be made to third parties not otherwise disclosed under paragraphs (f) and (g) of this section, labeled "Total Payoffs and Payments";

* * * * *

(o) * * *

(4) *Rounding*—(i) *Nearest dollar*. (A) The dollar amounts required to be disclosed by paragraphs (b)(6) and (7), (c)(1)(iii), (c)(2)(ii) and (iii), (c)(4)(ii), (f), (g), (h), (i), and (l) of this section shall be rounded to the nearest whole dollar, except that the per-diem dollar amount required to be disclosed by paragraph (g)(2)(iii) of this section and the monthly dollar amounts required to be disclosed by paragraphs (g)(3)(i) through (iii) and (g)(3)(v) of this section shall not be rounded.

(B) The dollar amount required to be disclosed by paragraph (b)(1) of this section shall not be rounded, and if the amount is a whole number then the amount disclosed shall be truncated at the decimal point.

(C) The dollar amounts required to be disclosed by paragraph (c)(2)(iv) of this section shall be rounded to the nearest whole dollar, if any of the component amounts are required by paragraph (o)(4)(i)(A) of this section to be rounded to the nearest whole dollar.

(ii) *Percentages*. The percentage amounts required to be disclosed under paragraphs (b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), and (l)(2) and (3) of this section shall be disclosed by rounding the exact amounts to three decimal places and then dropping any trailing zeros that occur to the right of the decimal place.

* * * * *

8. Section 1026.38 is amended by revising paragraphs (a)(3)(iii), (d)(2) introductory text, (e) introductory text, (e)(2)(ii), (e)(2)(iii)(A)(*3*), (e)(4)(ii), (g)(1), (h)(3), (i)(1)(iii)(A)(*3*), (i)(4)(ii), (i)(6)(iv), (i)(7)(iii), (i)(8), (j)(2)(vi), (l)(7)(i), (o)(1), (t)(4)(ii), and (t)(5)(vii) introductory text to read as follows:

§ 1026.38 Content of disclosures for certain mortgage transactions (Closing Disclosure).

* * * * *

(a) * * *

(3) * * *

(iii) *Disbursement date*. The date the amount disclosed under paragraph (j)(3)(iii) (cash to close from or to borrower) or (k)(3)(iii) (cash from or to seller) of this section is expected to be paid in a purchase transaction under § 1026.37(a)(9)(i) to the consumer or seller, respectively, as applicable, except as provided in comment 38(a)(3)(iii)-1, or the date some or all of the loan amount disclosed under paragraph (b) of this section is expected to be paid to the consumer or a third party other than a settlement agent in a transaction that is not a purchase transaction under § 1026.37(a)(9)(i), labeled “Disbursement Date.”

* * * * *

(d) * * *

(2) *Alternative table for transactions without a seller or for simultaneous subordinate financing*. For transactions that do not involve a seller or for simultaneous subordinate financing, if the creditor disclosed the optional alternative table under § 1026.37(d)(2), the creditor shall disclose, with the label "Cash to Close," instead of the sum of the dollar amounts described in paragraph (d)(1)(ii) of this section:

* * * * *

(e) *Alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate financing.* For transactions that do not involve a seller or for simultaneous subordinate financing, if the creditor disclosed the optional alternative table under § 1026.37(h)(2), the creditor shall disclose, instead of the table described in paragraph (i) of this section, in a separate table, under the heading "Calculating Cash to Close," together with the statement "Use this table to see what has changed from your Loan Estimate":

* * * * *

(2) * * *

(ii) Under the subheading "Final," the amount disclosed under paragraph (h)(1) of this section, disclosed as a negative number if the amount disclosed under paragraph (h)(1) of this section is a positive number and disclosed as a positive number if the amount disclosed under paragraph (h)(1) of this section is a negative number; and

(iii) * * *

(A) * * *

(*3*) If the increase exceeds the limitations on increases in closing costs under § 1026.19(e)(3), a statement that such increase exceeds the legal limits by the dollar amount of the excess and, if any refund is provided under § 1026.19(f)(2)(v), a statement directing the consumer to the disclosure required under paragraph (h)(3) of this section or, if applicable, a statement directing the consumer to the principal reduction disclosure under paragraph (t)(5)(vii)(B) of this section. Such dollar amount shall equal the sum total of all excesses of the limitations on increases in closing costs under § 1026.19(e)(3), taking into account the different methods of calculating excesses of the limitations on increases in closing costs under § 1026.19(e)(3)(i) and (ii).

* * * * *

(4) * * *

(ii) Under the subheading "Final," the total amount of payoffs and payments made to third parties disclosed under paragraph (t)(5)(vii)(B) of this section, to the extent known, disclosed as a negative number if the total amount disclosed under paragraph (t)(5)(vii)(B) of this section is a positive number and disclosed as a positive number if the total amount disclosed under paragraph (t)(5)(vii)(B) of this section is a negative number;

* * * * *

(g) * * *

(1) *Taxes and other government fees.* Under the subheading "Taxes and Other Government Fees," an itemization of each amount that is expected to be paid to State and local governments for taxes and government fees and the total of all such itemized amounts that are designated borrower-paid at or before closing, as follows:

(i) On the first line:

(A) Before the columns described in paragraph (g) of this section, the total amount of fees for recording deeds and, separately, the total amount of fees for recording security instruments; and

(B) In the applicable column as described in paragraph (g) of this section, the total amounts paid for recording fees (including, but not limited to, the amounts in paragraph (g)(1)(i)(A) of this section); and

(ii) On subsequent lines, in the applicable column as described in paragraph (g) of this section, an itemization of transfer taxes, with the name of the government entity assessing the transfer tax.

* * * * *

(h) * * *

(3) The amount of lender credits as a negative number, labeled “Lender Credits” and designated borrower-paid at closing, and if a refund is provided pursuant to § 1026.19(f)(2)(v), a statement that this amount includes a credit for an amount that exceeds the limitations on increases in closing costs under § 1026.19(e)(3), and the amount of such credit under § 1026.19(f)(2)(v).

* * * * *

(i) * * *

(1) * * *

(iii) * * *

(A) * * *

(*3*) If the increase exceeds the limitations on increases in closing costs under § 1026.19(e)(3), a statement that such increase exceeds the legal limits by the dollar amount of

the excess, and if any refund is provided under § 1026.19(f)(2)(v), a statement directing the consumer to the disclosure required under paragraph (h)(3) of this section or, if a principal reduction is used to provide the refund, a statement directing the consumer to the principal reduction disclosure under paragraph (j)(1)(v) of this section. Such dollar amount shall equal the sum total of all excesses of the limitations on increases in closing costs under § 1026.19(e)(3), taking into account the different methods of calculating excesses of the limitations on increases in closing costs under § 1026.19(e)(3)(i) and (ii).

* * * * *

(4) * * *

(ii) Under the subheading "Final":

(A)(*1*) In a purchase transaction as defined in § 1026.37(a)(9)(i), the amount determined by subtracting the sum of the loan amount disclosed under paragraph (b) of this section and any amount of existing loans assumed or taken subject to that is disclosed under paragraph (j)(2)(iv) of this section from the sale price of the property disclosed under paragraph (a)(3)(vii)(A) of this section, labeled "Down Payment/Funds from Borrower," except as required by paragraph (i)(4)(ii)(A)(*2*) of this section;

(*2*) In a purchase transaction as defined in § 1026.37(a)(9)(i) that is a simultaneous subordinate financing transaction or that involves improvements to be made on the property, or when the sum of the loan amount disclosed under paragraph (b) of this section and any amount of existing loans assumed or taken subject to that is disclosed under paragraph (j)(2)(iv) of this section exceeds the sale price disclosed under paragraph (a)(3)(vii)(A) of this section, the amount of funds from the consumer as determined in accordance with paragraph (i)(6)(iv) of this section labeled "Down Payment/Funds from Borrower;" or

(B) In all transactions not subject to paragraph (i)(4)(ii)(A) of this section, the amount of funds from the consumer as determined in accordance with paragraph (i)(6)(iv) of this section, labeled “Down Payment/Funds from Borrower.”

* * * * *

(6) * * *

(iv) The “Down Payment/Funds from Borrower” to be disclosed under paragraph (i)(4)(ii)(A)(*2*) or (B) of this section, as applicable, and “Funds for Borrower” to be disclosed under paragraph (i)(6)(ii) of this section are determined by subtracting the sum of the loan amount disclosed under paragraph (b) of this section and any amount for existing loans assumed or taken subject to that is disclosed under paragraph (j)(2)(iv) of this section (excluding any closing costs financed disclosed under paragraph (i)(3)(ii) of this section) from the total amount of all existing debt being satisfied in the transaction disclosed under paragraphs (j)(1)(ii), (iii), and (v) of this section.

(A) If the calculation under this paragraph (i)(6)(iv) yields an amount that is a positive number, such amount shall be disclosed under paragraph (i)(4)(ii)(A)(*2*) or (B) of this section, as applicable, and $0 shall be disclosed under paragraph (i)(6)(ii) of this section.

(B) If the calculation under this paragraph (i)(6)(iv) yields an amount that is a negative number, such amount shall be disclosed under paragraph (i)(6)(ii) of this section, stated as a negative number, and $0 shall be disclosed under paragraph (i)(4)(ii)(A)(*2*) or (i)(4)(ii)(B) of this section, as applicable.

(C) If the calculation under this paragraph (i)(6)(iv) yields $0, $0 shall be disclosed under paragraph (i)(4)(ii)(A)(*2*) or (i)(4)(ii)(B) of this section, as applicable, and under paragraph (i)(6)(ii) of this section.

(7) * * *

(iii) Under the subheading "Did this change?," disclosed more prominently than the other disclosures under this paragraph (i)(7):

(A) If the amount disclosed under paragraph (i)(7)(ii) of this section is different than the amount disclosed under paragraph (i)(7)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer should see the details disclosed:

(*1*) Under paragraph (j)(2)(v) of this section and in the seller-paid column under paragraphs (f) and (g) of this section; or

(*2*) Under either paragraph (j)(2)(v) of this section or in the seller-paid column under paragraphs (f) or (g) of this section, if the details are only disclosed under paragraph (j)(2)(v) or paragraph (f) or (g); or

(B) If the amount disclosed under paragraph (i)(7)(ii) of this section is equal to the amount disclosed under paragraph (i)(7)(i) of this section, a statement of that fact.

(8) *Adjustments and other credits*. (i) Under the subheading "Loan Estimate," the amount disclosed on the Loan Estimate under § 1026.37(h)(1)(vii), labeled "Adjustments and Other Credits."

(ii) Under the subheading "Final," the amount equal to the total of the amounts disclosed under paragraphs (j)(1)(iii) and (v) of this section, to the extent amounts in paragraphs (j)(1)(iii) and (v) were not included in the calculation required by paragraph (i)(4) or (6) of this section, and paragraphs (j)(1)(vi) through (x) of this section, reduced by the total of the amounts disclosed under paragraphs (j)(2)(vi) through (xi) of this section.

(iii) Under the subheading “Did this change?,” disclosed more prominently than the other disclosures under this paragraph (i)(8):

(A) If the amount disclosed under paragraph (i)(8)(ii) of this section is different than the amount disclosed under paragraph (i)(8)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer should see the details disclosed under paragraphs (j)(1)(iii) and (v) through (x) and (j)(2)(vi) through (xi) of this section, as applicable; or

(B) If the amount disclosed under paragraph (i)(8)(ii) of this section is equal to the amount disclosed under paragraph (i)(8)(i) of this section, a statement of that fact.

* * * * *

(j) * * *

(2) * * *

(vi) Descriptions and amounts of other items paid by or on behalf of the consumer and not otherwise disclosed under paragraphs (f), (g), (h), and (j)(2) of this section, labeled “Other Credits,” and descriptions and the amounts of any additional amounts owed the consumer but payable to the seller before the real estate closing, under the heading “Adjustments”;

* * * * *

(l) * * *

(7) * * *

(i) Under the reference “For now,” a statement that an escrow account may also be called an impound or trust account, a statement of whether the creditor has established or will establish (at or before consummation) an escrow account in connection with the transaction, and the information required under paragraphs (l)(7)(i)(A) and (B) of this section:

(A) A statement that the creditor may be liable for penalties and interest if it fails to make a payment for any cost for which the escrow account is established, a statement that the consumer would have to pay such costs directly in the absence of the escrow account, and a table, titled "Escrow," that contains, if an escrow account is or will be established, an itemization of the amounts listed in paragraphs (l)(7)(i)(A)(*1*) through (*4*) of this section;

(*1*) The total amount the consumer will be required to pay into an escrow account over the first year after consummation, labeled "Escrowed Property Costs over Year 1," together with a descriptive name of each charge to be paid (in whole or in part) from the escrow account, calculated as the amount disclosed under paragraph (l)(7)(i)(A)(*4*) of this section multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation;

(*2*) The estimated amount the consumer is likely to pay during the first year after consummation for the mortgage-related obligations described in § 1026.43(b)(8) that are known to the creditor and that will not be paid using escrow account funds, labeled "Non-Escrowed Property Costs over Year 1," together with a descriptive name of each such charge and a statement that the consumer may have to pay other costs that are not listed;

(*3*) The total amount disclosed under paragraph (g)(3) of this section, a statement that the payment is a cushion for the escrow account, labeled "Initial Escrow Payment," and a reference to the information disclosed under paragraph (g)(3) of this section;

(*4*) The amount the consumer will be required to pay into the escrow account with each periodic payment during the first year after consummation, labeled "Monthly Escrow Payment."

(*5*) A creditor complies with the requirements of paragraphs (l)(7)(i)(A)(*1*) and (*4*) of this section if the creditor bases the numerical disclosures required by those paragraphs on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17.

(B) A statement of whether the consumer will not have an escrow account, the reason why an escrow account will not be established, a statement that the consumer must pay all property costs, such as taxes and homeowner's insurance, directly, a statement that the consumer may contact the creditor to inquire about the availability of an escrow account, and a table, titled "No Escrow," that contains, if an escrow account will not be established, an itemization of the following:

(*1*) The estimated total amount the consumer will pay directly for the mortgage-related obligations described in § 1026.43(b)(8) during the first year after consummation that are known to the creditor and a statement that, without an escrow account, the consumer must pay the identified costs, possibly in one or two large payments, labeled "Property Costs over Year 1"; and

(*2*) The amount of any fee the creditor imposes on the consumer for not establishing an escrow account in connection with the transaction, labeled "Escrow Waiver Fee."

* * * * *

(o) * * *

(1) *Total of payments.* The "Total of Payments," using that term and expressed as a dollar amount, and a statement that the disclosure is the total the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled. The disclosed total of payments shall be treated as accurate if the amount disclosed as the total of payments:

(i) Is understated by no more than $100; or

(ii) Is greater than the amount required to be disclosed.

* * * * *

(t) * * *

(4) * * *

(ii) *Percentages.* The percentage amounts required to be disclosed under paragraphs (b), (f)(1), (n), and (o)(4) and (5) of this section shall be disclosed by rounding the exact amounts to three decimal places and then dropping any trailing zeros to the right of the decimal point.

* * * * *

(5) * * *

(vii) *Transaction without a seller or simultaneous subordinate financing transaction.* The following modifications to form H-25 of appendix H to this part may be made for a transaction that does not involve a seller or for simultaneous subordinate financing, and for which the alternative tables are disclosed under paragraphs (d)(2) and (e) of this section, as illustrated by form H-25(J) of appendix H to this part:

* * * * *

Subpart G—Special Rules Applicable to Credit Card Accounts and Open End Credit Offered to College Students

9. In *Supplement I to Part 1026—Official Interpretations*:

a. Under *Section 1026.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability*, under *1(d) Organization, Paragraph 1(d)(5)* is revised.

b. Under *Section 1026.2—Definitions and Rules of Construction*, under *2(a)(11) Consumer*, paragraph 3 is revised.

c. Under *Section 1026.3—Exempt Transactions, 3(h) Partial exemption for certain mortgage loans* is revised.

d. Under *Section 1026.17—General Disclosure Requirements*:

i. Under *17(c) Basis of Disclosures and Use of Estimates*, under *Paragraph 17(c)(6)*, paragraph 5 is revised.

ii. Under *17(f) Early Disclosures*, paragraphs 1 and 2 are revised.

e. Under *Section 1026.18—Content of Disclosures*:

i. Paragraph 3 is revised.

ii. Under *18(g) Payment Schedule*, paragraph 6 is revised.

iii. Under *18(s) Interest Rate and Payment Summary for Mortgage Transactions*, paragraphs 1 and 4 are revised.

f. Under *Section 1026.19—Certain Mortgage and Variable-Rate Transactions*:

i. Under *19(e) Mortgage loans secured by real property—Early disclosures*:

A. The heading is revised.

B. *19(e)(1)(i) Creditor* is revised.

C. Under *19(e)(1)(iii) Timing*, paragraph 5 is added.

D. Under *19(e)(1)(vi) Shopping for settlement service providers*, paragraphs 1 through 4 are revised.

E. Under *19(e)(3)(i) General rule*, paragraph 1 is revised.

F. Under *19(e)(3)(ii) Limited increases permitted for certain charges*, paragraphs 1 and 2 are revised and paragraph 6 is added.

G. Under *19(e)(3)(iii) Variations permitted for certain charges*, paragraphs 2 and 3 are revised and paragraph 4 is added.

H. Under *19(e)(3)(iv) Revised estimates*, paragraph 2 is revised and paragraphs 4 and 5 are added.

I. *19(e)(3)(iv)(D) Interest rate dependent charges* is revised.

J. *19(e)(3)(iv)(E) Expiration* is revised.

ii. Under *19(f) Mortgage loans secured by real property—Final disclosures*:

A. The heading is revised.

B. Under *19(f)(1)(i) Scope*, paragraph 1 is revised.

C. Under *19(f)(2)(iii) Changes due to events occurring after consummation*, paragraph 2 is added.

D. *19(f)(2)(v) Refunds related to the good faith analysis* is revised.

E. Under *19(f)(3)(ii) Average charge*, paragraph 3 is revised.

F. *19(f)(4)(i) Provision to seller* is revised.

g. Under *Section 1026.23—Right of Rescission*:

i. Under *23(g) Tolerances for Accuracy*, paragraph 1 is added.

ii. Under *23(h) Special Rules for Foreclosures*, *23(h)(2) Tolerance for Disclosures* is revised.

h. Under *Section 1026.25—Record Retention*, under *25(c) Records Related to Certain Requirements for Mortgage Loans*, the heading for *25(c)(1)* is revised.

i. Under S*ection 1026.37—Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)*:

i. Under *37(a) General information*:

A. *37(a)(7) Sale price* is revised.

B. Under *37(a)(8) Loan term*, paragraph 3 is added.

C. Under *37(a)(9) Purpose*, paragraph 1 is revised.

D. Under *37(a)(10) Product*, paragraph 2 is revised.

E. Under *37(a)(13) Rate lock*, paragraph 2 is revised and paragraph 4 is added.

ii. Under *37(b) Loan terms*:

A. *37(b)(2) Interest rate* is revised.

B. Under *37(b)(3) Principal and interest payment*, paragraph 2 is revised.

C. Under *37(b)(6)(iii) Increase in periodic payment*, paragraph 1 is revised.

iii. Under *37(c) Projected payments*:

A. Paragraph 2 is added.

B. *Paragraph 37(c)(1)(iii)(B)* is revised.

C. Under *Paragraph 37(c)(4)(iv)*, paragraph 2 is revised.

iv. Under *37(d) Costs at closing*, the heading for *37(d)(2)* and paragraph 1 are revised.

v. Under *37(f) Closing cost details; loan costs*:

A. Paragraph 3 is added.

B. Under *37(f)(6) Use of addenda*, paragraph 3 is added.

vi. Under *37(g) Closing cost details; other costs*, under *Paragraph 37(g)(6)(ii)*, paragraph 1 is revised.

vii. Under *37(h) Calculating cash to close*:

A. Under *37(h)(1) For all transactions*, paragraph 2 is added.

B. *37(h)(1)(ii), 37(h)(1)(iii), 37(h)(1)(v),* and *37(h)(1)(vi)* are revised.

C. Under *37(h)(1)(vii) Adjustments and other credits*, paragraphs 1, 4, 5, and 6 are revised.

D. *37(h)(2)* and *37(h)(2)(iii)* are revised.

viii. Under *37(k) Contact information*, paragraph 3 is revised.

ix. Under *37(l) Comparisons*:

A. Under *Paragraph 37(l)(1)(i)*, paragraph 1 is revised.

B. Under *37(l)(3) Total interest percentage*, paragraph 1 is revised.

x. Under *37(o) Form of disclosures*, *37(o)(4)(i)(A)* and *37(o)(4)(ii)* are revised.

j. Under *Section 1026.38—Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure)*:

i. Paragraph 4 is added.

ii. Under *38(a) General information*:

A. *38(a)(3)(iii) Disbursement date* is added.

B. Under *38(a)(3)(vii) Sale price*, paragraph 1 is revised.

C. Under *38(a)(4) Transaction information*, paragraph 2 is revised and paragraph 4 is added.

iii. Under *38(d) Costs at closing*, the heading for *38(d)(2)* and paragraph 1 are revised.

iv. Under *38(e) Alternative calculating cash to close table for transactions without a seller*:

A. The heading is revised, paragraphs 1 and 3 are revised, and paragraph 6 is added.

B. Under *Paragraph 38(e)(2)(iii)(A)*, paragraphs 2 and 3 are revised.

C. *Paragraph 38(e)(3)(iii)(B)* is revised.

v. Under *38(f) Closing cost details; loan costs*, paragraph 2 is added.

vi. Under *38(g) Closing costs details; other costs*:

A. Under *38(g)(1) Taxes and other government fees*, paragraph 3 is added.

B. Under *38(g)(2) Prepaids*, paragraph 3 is revised.

vii. Under *38(i) Calculating cash to close*:

A. Paragraphs 2 and 3 are revised and paragraph 5 is added.

B. Under *Paragraph 38(i)(1)(iii)(A)*, paragraphs 2 and 3 are revised.

C. *38(i)(3) Closing costs financed* is added.

D. *Paragraph 38(i)(4)(ii)(A)* is revised.

E. *Paragraph 38(i)(4)(ii)(B)* is revised.

F. *Paragraph 38(i)(4)(iii)(A)* is revised.

G. *38(i)(5) Deposit* is revised.

H. *Paragraph 38(i)(6)(ii)* is revised.

I. *Paragraph 38(i)(7)(iii)(A)* is added.

J. *Paragraph 38(i)(8)(ii)* is revised.

viii. Under *38(j) Summary of borrower's transaction*:

A. Paragraph 3 is revised.

B. *Paragraph 38(j)(1)(ii)* is revised.

C. *Paragraph 38(j)(1)(v)* is revised.

D. Under *Paragraph 38(j)(2)(vi)*, paragraphs 2 and 5 are revised and paragraph 6 is added.

E. *Paragraph 38(j)(2)(xi)* is revised.

F. Under *Paragraph 38(j)(4)(i)*, paragraph 1 is revised.

ix. Under *38(k) Summary of seller's transaction*:

A. Paragraph 1 is revised.

B. *38(k)(1) Itemization of amounts due to seller* is added.

C. *Paragraph 38(k)(2)(vii)* is added.

x. Under *38(l) Loan disclosures*:

A. Under *38(l)(7) Escrow account*, paragraphs 1 and 2 are added.

B. *Paragraph 38(l)(7)(i)(A)(2)* is revised.

C. *Paragraph 38(l)(7)(i)(A)(4)* is revised.

D. *Paragraph 38(l)(7)(i)(A)(5)* is added.

E. *Paragraph 38(l)(7)(i)(B)(1)* is revised.

xi. Under *38(o) Loan calculations*:

A. Paragraph 1 is added.

B. *38(o)(1) Total of payments* is revised.

xii. Under *38(t) Form of disclosures*:

A. *38(t)(3) Form* is revised.

B. *38(t)(5)(v)* and *38(t)(5)(vi)* are added.

C. The heading for *38(t)(5)(vii)* and paragraph 2 are revised.

D. *Paragraph 38(t)(5)(vii)(B)* is added.

k. Under *Appendix D—Multiple-Advance Construction Loans*, paragraph 7 is revised.

The revisions and additions read as follows:

Supplement I to Part 1026—Official Interpretations

Section 1026.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability

* * * * *

1(d) Organization.

Paragraph 1(d)(5).

1. *Effective date*. i. *General.* The Bureau's revisions to Regulation X and Regulation Z published on December 31, 2013 (the TILA-RESPA Final Rule) apply to covered loans (closed-

end credit transactions that are secured by real property or a cooperative unit, whether or not treated as real property under State or other applicable law) for which the creditor or mortgage broker receives an application on or after October 3, 2015 (the effective date), except that § 1026.19(e)(2), the amendments to § 1026.28(a)(1), and the amendments to the commentary to § 1026.29 became effective on October 3, 2015, without respect to whether an application was received as of that date. Additionally, §§ 1026.20(e) and 1026.39(d)(5), as amended or adopted by the TILA-RESPA Final Rule, took effect on October 3, 2015, for transactions for which the creditor or mortgage broker received an application on or after October 3, 2015, and take effect October 1, 2018, with respect to transactions for which a creditor or mortgage broker received an application prior to October 3, 2015.

ii. *Pre-application activities.* The provisions of § 1026.19(e)(2) apply prior to a consumer's receipt of the disclosures required by § 1026.19(e)(1)(i) and therefore restrict activity that may occur prior to receipt of an application by a creditor or mortgage broker. These provisions include § 1026.19(e)(2)(i), which restricts the fees that may be imposed on a consumer, § 1026.19(e)(2)(ii), which requires a statement to be included on written estimates of terms or costs specific to a consumer, and § 1026.19(e)(2)(iii), which prohibits creditors from requiring the submission of documents verifying information related to the consumer's application. Accordingly, the provisions of § 1026.19(e)(2) are effective on October 3, 2015, without respect to whether an application has been received on that date.

iii. *Determination of preemption.* The amendments to § 1026.28 and the commentary to § 1026.29 govern the preemption of State laws, and thus the amendments to those provisions and associated commentary made by the TILA-RESPA Final Rule are effective on October 3, 2015, without respect to whether an application has been received on that date.

iv. *Post-consummation escrow cancellation disclosure and partial payment disclosure*. A creditor, servicer, or covered person, as applicable, must provide the disclosures required by §§ 1026.20(e) and 1026.39(d)(5) for transactions for which the conditions in § 1026.20(e) or § 1026.39(d)(5), as applicable, exist on or after October 1, 2018, regardless of when the corresponding applications were received. For transactions in which such conditions exist on or after October 3, 2015, through September 30, 2018, a creditor, servicer, or covered person, as applicable, complies with §§ 1026.20(e) and 1026.39(d)(5) if it provides the mandated disclosures in all cases or if it provides them only in cases where the corresponding applications were received on or after October 3, 2015.

v. *Examples.* For purposes of the following examples, an application received before or after the effective date is any submission for the purpose of obtaining an extension of credit that satisfies the definition in § 1026.2(a)(3), as adopted by the TILA-RESPA Final Rule, even if that definition was not yet in effect on the date in question. Cross-references in the following examples to provisions of Regulation Z refer to those provisions as adopted or amended by the TILA-RESPA Final Rule, together with any subsequent amendments, unless noted otherwise.

A. *Application received on or after effective date of the TILA-RESPA Final Rule.* Assume a creditor receives an application on October 3, 2015, and that consummation of the transaction occurs on October 31, 2015. The amendments of the TILA-RESPA Final Rule, including the requirement to provide the Loan Estimate and Closing Disclosure under § 1026.19(e) and (f), apply to the transaction. The creditor is also required to provide the special information booklet under § 1026.19(g).

B. *Application received before effective date of the TILA-RESPA Final Rule.* Assume a creditor receives an application on September 30, 2015, and that consummation of the

transaction occurs on October 30, 2015. The requirement to provide the Loan Estimate and Closing Disclosure under § 1026.19(e) and (f) does not apply to the transaction. Instead, the creditor and the settlement agent must provide the disclosures required by § 1026.19, as it existed prior to the effective date of the TILA-RESPA Final Rule, and by Regulation X, 12 CFR 1024.8. Similarly, the creditor must provide the special information booklet required by Regulation X, 12 CFR 1024.6. However, the provisions of § 1026.19(e)(2) apply to the transaction beginning on October 3, 2015, because they became effective on October 3, 2015, without respect to whether an application was received by the creditor or mortgage broker on that date.

C. *Predisclosure written estimates*. Assume a creditor receives a request from a consumer for a written estimate of terms or costs specific to the consumer on October 3, 2015, before the consumer submits an application to the creditor and thus before the consumer has received the disclosures required by § 1026.19(e)(1)(i). The creditor, if it provides such a written estimate to the consumer, must comply with § 1026.19(e)(2)(ii) and provide the required statement on the written estimate, even though the creditor has not received an application on that date.

D. *Request for preemption determination*. Assume a creditor submits a request to the Bureau under § 1026.28(a)(1) for a determination of whether a State law is inconsistent with the disclosure requirements in Regulation Z on October 3, 2015. Because the amendments to § 1026.28(a)(1) are effective on that date and do not depend on whether the creditor has received an application, § 1026.28(a)(1) is applicable to the request on that date, and the Bureau would make a determination based on the provisions of Regulation Z in effect on that date, including the requirements of § 1026.19(e) and (f).

E. *Effective dates for the post-consummation escrow cancelation disclosure and partial payment disclosure*. Assume a creditor receives an application on October 10, 2010, and that the loan was consummated on November 19, 2010. Assume further that, on December 19, 2016, the escrow account established in connection with the mortgage loan was canceled or the loan is sold to another covered person. A creditor, servicer, or covered person, as applicable, may provide the disclosures required under §§ 1026.20(e) and 1026.39(d)(5) to the consumer, but the creditor, servicer, or covered person, as applicable, is not required to provide those disclosures in this case. Assume the same circumstances, except that the escrow account established in connection with the loan is canceled or the mortgage loan is sold to another covered person on April 14, 2020. A creditor, servicer, or covered person, as applicable, must provide the disclosures in §§ 1026.20(e) and 1026.39(d)(5), as applicable, because a condition requiring these disclosures occurred after October 1, 2018 (thus the date the application was received is irrelevant).

2. *2017 TILA-RESPA Amendments*. i. *Generally*. Except as provided in comment 1(d)(5)-2.ii, compliance with the amendments to this part effective on October 10, 2017 (the 2017 TILA-RESPA Amendments) is mandatory with respect to transactions for which a creditor or mortgage broker received an application on or after October 1, 2018. Except as provided in comment 1(d)(5)-2.ii, for transactions for which a creditor or mortgage broker received an application prior to October 1, 2018, from the effective date of the 2017 TILA-RESPA Amendments:

A. A person has the option of complying either: with 12 CFR part 1026 as it is in effect; or with 12 CFR part 1026 as it was in effect on October 9, 2017, together with any amendments to 12 CFR part 1026 that become effective after October 9, 2017, other than the 2017 TILA-RESPA Amendments; and

B. An act or omission violates 12 CFR part 1026 only if it violates both: 12 CFR part 1026 as it is in effect; and 12 CFR part 1026 as it was in effect on October 9, 2017, together with any amendments to 12 CFR part 1026 that become effective after October 9, 2017, other than the 2017 TILA-RESPA Amendments.

ii. *Post-consummation escrow cancellation disclosure and partial payment disclosure*. Comment 1(d)(5)-1.iv sets forth the transactions to which the disclosures required by §§ 1026.20(e) and 1026.39(d)(5) are applicable.

Section 1026.2—Definitions and Rules of Construction

* * * * *

2(a)(11) Consumer

* * * * *

3. *Trusts.* Credit extended to trusts established for tax or estate planning purposes or to land trusts, as described in comment 3(a)-10, is considered to be extended to a natural person for purposes of the definition of consumer.

* * * * *

Section 1026.3—Exempt Transactions

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3(h) Partial exemption for certain mortgage loans.

1. *Partial exemption*. Section 1026.3(h) exempts certain transactions from the disclosures described in § 1026.19(g), and, under certain circumstances, § 1026.19(e) and (f). Section 1026.3(h) exempts transactions from § 1026.19(e) and (f) if the creditor chooses to provide disclosures described in § 1026.18 that comply with this part pursuant to § 1026.3(h)(6)(i), but does not exempt transactions from § 1026.19(e) and (f) if the creditor

chooses to provide disclosures described in § 1026.19(e) and (f) that comply with this part pursuant to § 1026.3(h)(6)(ii). Creditors may provide, at their option, either the disclosures described in § 1026.18 or the disclosures described in § 1026.19(e) and (f). In providing these disclosures, creditors must comply with all provisions of this part relating to those disclosures. Section 1026.3(h) does not exempt transactions from any of the other requirements of this part, to the extent they are applicable. For transactions that would otherwise be subject to § 1026.19(e), (f), and (g), creditors must comply with all other applicable requirements of this part, including the consumer's right to rescind the transaction under § 1026.23, to the extent that provision is applicable.

2. *Establishing compliance*. The conditions that the transaction not require the payment of interest under § 1026.3(h)(3) and that repayment of the amount of credit extended be forgiven or deferred in accordance with § 1026.3(h)(4) must be reflected in the loan contract. The other requirements of § 1026.3(h) need not be reflected in the loan contract, but the creditor must retain evidence of compliance with those provisions, as required by § 1026.25(a) or (c), as applicable. In particular, because the exemption in § 1026.3(h) means the creditor is not required to provide the disclosures of closing costs under § 1026.37 or § 1026.38 (unless the creditor chooses to provide disclosures described in § 1026.19(e) and (f) that comply with this part), the creditor must retain evidence reflecting that the costs payable by the consumer in connection with the transaction at consummation are limited to recording fees, transfer taxes, a bona fide and reasonable application fee, and a bona fide and reasonable housing counseling fee, and that the total of application and housing counseling fees is less than 1 percent of the amount of credit extended, in accordance with § 1026.3(h)(5). Unless the itemization of the amount financed provided to the consumer sufficiently details this requirement, the creditor must establish

compliance with § 1026.3(h)(5) by some other written document and retain it in accordance with § 1026.25(a) or (c), as applicable.

3. *Relationship to partial exemption for certain federally related mortgage loans*. Regulation X provides a partial exemption from certain Regulation X disclosure requirements in 12 CFR 1024.5(d). The partial exemption in Regulation X, 12 CFR 1024.5(d)(2) provides that certain Regulation X disclosure requirements do not apply to a federally related mortgage loan, as defined in Regulation X, 12 CFR 1024.2(b), that satisfies the criteria in § 1026.3(h) of this part. For a federally related mortgage loan that is not otherwise covered by Regulation Z, lenders may satisfy the criteria in § 1026.3(h)(6) by providing the disclosures described in § 1026.18 that comply with this part or the disclosures described in § 1026.19(e) and (f) that comply with this part.

4. *Recording fees*. See comment 37(g)(1)-1 for a discussion of what constitutes a recording fee.

5. *Transfer taxes*. See comment 37(g)(1)-3 for a discussion of what constitutes a transfer tax.

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Section 1026.17—General Disclosure Requirements

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17(c) Basis of Disclosures and Use of Estimates

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Paragraph 17(c)(6)

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5. *Allocation of costs.* When a creditor uses the special rule in § 1026.17(c)(6) to disclose credit extensions as multiple transactions, fees and charges must be allocated for purposes of calculating disclosures. In the case of a construction-permanent loan that a creditor chooses to disclose as multiple transactions, the creditor must allocate to the construction transaction finance charges under § 1026.4 and points and fees under § 1026.32(b)(1) that would not be imposed but for the construction financing. For example, inspection and handling fees for the staged disbursement of construction loan proceeds must be included in the disclosures for the construction phase and may not be included in the disclosures for the permanent phase. If a creditor charges separate amounts for finance charges under § 1026.4 and points and fees under § 1026.32(b)(1) for the construction phase and the permanent phase, such amounts must be allocated to the phase for which they are charged. If a creditor charges an origination fee for construction financing only but charges a greater origination fee for construction-permanent financing, the difference between the two fees must be allocated to the permanent phase. All other finance charges under § 1026.4 and points and fees under § 1026.32(b)(1) must be allocated to the permanent financing. Fees and charges that are not used to compute the finance charge under § 1026.4 or points and fees under § 1026.32(b)(1) may be allocated between the transactions in any manner the creditor chooses. For example, a reasonable appraisal fee paid to an independent, third-party appraiser may be allocated in any manner the creditor chooses because it would be excluded from the finance charge pursuant to § 1026.4(c)(7) and excluded from points and fees pursuant to § 1026.32(b)(1)(iii).

* * * * *

17(f) Early Disclosures

1. *Change in rate or other terms.* Redisclosure is required for changes that occur between the time disclosures are made and consummation if the annual percentage rate in the consummated transaction exceeds the limits prescribed in § 1026.17(f) even if the prior disclosures would be considered accurate under the tolerances in § 1026.18(d) or 1026.22(a). To illustrate:

i. *Transactions not secured by real property or a cooperative unit.* A. For transactions not secured by real property or a cooperative unit, if disclosures are made in a regular transaction on July 1, the transaction is consummated on July 15, and the actual annual percentage rate varies by more than 1/8 of 1 percentage point from the disclosed annual percentage rate, the creditor must either redisclose the changed terms or furnish a complete set of new disclosures before consummation. Redisclosure is required even if the disclosures made on July 1 are based on estimates and marked as such.

B. In a regular transaction not secured by real property or a cooperative unit, if early disclosures are marked as estimates and the disclosed annual percentage rate is within 1/8 of 1 percentage point of the rate at consummation, the creditor need not redisclose the changed terms (including the annual percentage rate).

C. If disclosures for transactions not secured by real property or a cooperative unit are made on July 1, the transaction is consummated on July 15, and the finance charge increased by $35 but the disclosed annual percentage rate is within the permitted tolerance, the creditor must at least redisclose the changed terms that were not marked as estimates. *See* § 1026.18(d)(2).

ii. *Reverse mortgages.* In a transaction subject to § 1026.19(a) and not § 1026.19(e) and (f), assume that, at the time the disclosures required by § 1026.19(a) are prepared in July, the

loan closing is scheduled for July 31 and the creditor does not plan to collect per-diem interest at consummation. Assume further that consummation actually occurs on August 5, and per-diem interest for the remainder of August is collected as a prepaid finance charge. The creditor may rely on the disclosures prepared in July that were accurate when they were prepared. However, if the creditor prepares new disclosures in August that will be provided at consummation, the new disclosures must take into account the amount of the per-diem interest known to the creditor at that time.

iii. *Transactions secured by real property or a cooperative unit other than reverse mortgages.* For transactions secured by real property or a cooperative unit other than reverse mortgages, assume that, at the time the disclosures required by § 1026.19(e) are prepared in July, the loan closing is scheduled for July 31 and the creditor does not plan to collect per-diem interest at consummation. Assume further that consummation actually occurs on August 5, and per-diem interest for the remainder of August is collected as a prepaid finance charge. The creditor must make the disclosures required by § 1026.19(f) three days before consummation, and the disclosures required by § 1026.19(f) must take into account the amount of per-diem interest that will be collected at consummation.

2. *Variable rate.* The addition of a variable rate feature to the credit terms, after early disclosures are given, requires new disclosures. See § 1026.19(e) and (f) to determine when new disclosures are required for transactions secured by real property or a cooperative unit, other than reverse mortgages.

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Section 1026.18—Content of Disclosures

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3. *Scope of coverage.* i. Section 1026.18 applies to closed-end consumer credit transactions, other than transactions that are subject to § 1026.19(e) and (f). Section 1026.19(e) and (f) applies to closed-end consumer credit transactions that are secured by real property or a cooperative unit, other than reverse mortgages subject to § 1026.33. Accordingly, the disclosures required by § 1026.18 apply only to closed-end consumer credit transactions that are:

A. Unsecured;

B. Secured by personal property that is not a dwelling;

C. Secured by personal property (other than a cooperative unit) that is a dwelling and are not also secured by real property; or

D. Reverse mortgages subject to § 1026.33.

ii. Of the foregoing transactions that are subject to § 1026.18, the creditor discloses a payment schedule under § 1026.18(g) for those described in paragraphs i.A and i.B of this comment. For transactions described in paragraphs i.C and i.D of this comment, the creditor discloses an interest rate and payment summary table under § 1026.18(s). See also comments 18(g)-6 and 18(s)-4 for additional guidance on the applicability to different transaction types of §§ 1026.18(g) or (s) and 1026.19(e) and (f).

iii. Because § 1026.18 does not apply to transactions secured by real property or a cooperative unit, other than reverse mortgages, references in the section and its commentary to "mortgages" refer only to transactions described in paragraphs i.C and i.D of this comment, as applicable.

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18(g) Payment Schedule

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6. *Mortgage transactions.* Section 1026.18(g) applies to closed-end transactions, other than transactions that are subject to § 1026.18(s) or § 1026.19(e) and (f). Section 1026.18(s) applies to closed-end transactions secured by real property or a dwelling, unless they are subject to § 1026.19(e) and (f). Section 1026.19(e) and (f) applies to closed-end transactions secured by real property or a cooperative unit, other than reverse mortgages. Thus, if a closed-end consumer credit transaction is secured by real property, a cooperative unit, or a dwelling and the transaction is a reverse mortgage or the dwelling is personal property but not a cooperative unit, then the creditor discloses an interest rate and payment summary table in accordance with § 1026.18(s). *See* comment 18(s)-4. If a closed-end consumer credit transaction is secured by real property or a cooperative unit and is not a reverse mortgage, the creditor discloses a projected payments table in accordance with §§ 1026.37(c) and 1026.38(c), as required by § 1026.19(e) and (f). In all such cases, the creditor is not subject to the requirements of § 1026.18(g). On the other hand, if a closed-end consumer credit transaction is not secured by real property or a dwelling (for example, if it is unsecured or secured by an automobile), the creditor discloses a payment schedule in accordance with § 1026.18(g) and is not subject to the requirements of § 1026.18(s) or §§ 1026.37(c) and 1026.38(c).

* * * * *

18(s) Interest Rate and Payment Summary for Mortgage Transactions

1. *In general*. Section 1026.18(s) prescribes format and content for disclosure of interest rates and monthly (or other periodic) payments for reverse mortgages and certain transactions secured by dwellings that are personal property but not cooperative units. The information in § 1026.18(s)(2) through (4) is required to be in the form of a table, except as otherwise provided, with headings and format substantially similar to model clause H-4(E), H-4(F), H-4(G), or H-

4(H) in appendix H to this part. A disclosure that does not include the shading shown in a model clause but otherwise follows the model clause's headings and format is substantially similar to that model clause. Where § 1026.18(s)(2) through (4) or the applicable model clause requires that a column or row of the table be labeled using the word "monthly" but the periodic payments are not due monthly, the creditor should use the appropriate term, such as "bi-weekly" or "quarterly." In all cases, the table should have no more than five vertical columns corresponding to applicable interest rates at various times during the loan's term; corresponding payments would be shown in horizontal rows. Certain loan types and terms are defined for purposes of § 1026.18(s) in § 1026.18(s)(7).

* * * * *

4. *Scope of coverage in relation to § 1026.19(e) and (f).* Section 1026.18(s) applies to transactions secured by real property or a dwelling, other than transactions that are subject to § 1026.19(e) and (f). Those provisions apply to closed-end transactions secured by real property or a cooperative unit, other than reverse mortgages. Accordingly, § 1026.18(s) governs only closed-end reverse mortgages and closed-end transactions secured by a dwelling, other than a cooperative, that is personal property (such as a mobile home that is not deemed real property under State or other applicable law).

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Section 1026.19—Certain Mortgage and Variable-Rate Transactions

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19(e) Mortgage loans—Early disclosures.

* * * * *

19(e)(1) Provision of disclosures.

19(e)(1)(i) Creditor.

1. *Requirements*. Section 1026.19(e)(1)(i) requires early disclosure of credit terms in closed-end credit transactions that are secured by real property or a cooperative unit, other than reverse mortgages. These disclosures must be provided in good faith. Except as otherwise provided in § 1026.19(e), a disclosure is in good faith if it is consistent with § 1026.17(c)(2)(i). Section 1026.17(c)(2)(i) provides that if any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer. The "reasonably available" standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. See comment 17(c)(2)(i)-1 for an explanation of the standard set forth in § 1026.17(c)(2)(i). See comment 17(c)(2)(i)-2 for labeling disclosures required under § 1026.19(e) that are estimates.

2. *Cooperative units*. Section 1026.19(e)(1)(i) requires early disclosure of credit terms in closed-end credit transactions, other than reverse mortgages, that are secured by real property or a cooperative unit, regardless of whether a cooperative unit is treated as real property under State or other applicable law.

* * * * *

19(e)(1)(iii) Timing.

* * * * *

5. *Multiple-advance construction loans.* Section 1026.19(e)(1)(iii) generally requires a creditor to deliver the Loan Estimate or place it in the mail not later than the third business day after the creditor receives the consumer's application and not later than the seventh business day

before consummation. When a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, § 1026.17(c)(6)(ii) and comment 17(c)(6)-2 permit creditors to treat the construction phase and the permanent phase as either one transaction, with one combined disclosure, or more than one transaction, with a separate disclosure for each transaction. For construction–permanent transactions disclosed as one transaction, the creditor complies with § 1026.19(e)(1)(iii) by delivering or placing in the mail one combined disclosure required by § 1026.19(e)(1)(i) not later than the third business day after the creditor receives an application and not later than the seventh business day before consummation. For construction–permanent transactions disclosed as a separate construction phase and a separate permanent phase for which an application for both the construction and permanent financing has been received, the creditor complies with § 1026.19(e)(1)(iii) by delivering or placing in the mail the separate disclosures required by § 1026.19(e)(1)(i) for both the construction financing and the permanent financing not later than the third business day after the creditor receives the application and not later than the seventh business day before consummation. A creditor may also provide a separate disclosure required by § 1026.19(e)(1)(i) for the permanent phase before receiving an application for permanent financing at any time not later than the seventh business day before consummation. To illustrate:

i. Assume a creditor receives a consumer's application for construction financing only on Monday, June 1. The creditor must deliver or place in the mail the disclosures required by § 1026.19(e)(1)(i) for only the construction financing no later than Thursday, June 4, the third business day after the creditor received the consumer's application, and not later than the seventh business day before consummation of the transaction.

ii. Assume the creditor receives a consumer's application for both construction and permanent financing on Monday, June 1. The creditor must deliver or place in the mail the disclosures required by § 1026.19(e)(1)(i) for both the construction and permanent financing, disclosed as either one transaction or separate transactions, no later than Thursday, June 4, the third business day after the creditor received the consumer's application, and not later than the seventh business day before consummation of the transaction.

iii. Assume the creditor receives a consumer's application for construction financing only on Monday, June 1. Assume further that the creditor receives the consumer's application for permanent financing on Monday, June 8. The creditor must deliver or place in the mail the disclosures required by § 1026.19(e)(1)(i) for the construction financing no later than Thursday, June 4, the third business day after the creditor received the consumer's application for the construction financing only, and not later than the seventh business day before consummation of the construction transaction. The creditor must deliver or place in the mail the disclosures required by § 1026.19(e)(1)(i) for the permanent financing no later than Thursday, June 11, the third business day after the creditor received the consumer's application for the permanent financing, and not later than the seventh business day before consummation of the permanent financing transaction.

iv. Assume the same facts as in comment 19(e)(1)(iii)-5.ii, under which the creditor provides the disclosures required by § 1026.19(e)(1)(i) for both construction financing and permanent financing. If the creditor generally conducts separate closings for the construction financing and the permanent financing or expects that the construction financing and the permanent financing may have separate closings, providing separate Loan Estimates for the construction financing and for the permanent financing allows the creditor to deliver separate

Closing Disclosures for the separate phases. For example, assume further that the consumer has requested permanent financing after receiving separate Loan Estimates for the construction financing and for the permanent financing, that consummation of the construction financing is scheduled for July 1, and that consummation of the permanent financing is scheduled on or about June 1 of the following year. The creditor may provide the construction financing Closing Disclosure at least three business days before consummation of that transaction on July 1 and delay providing the permanent financing Closing Disclosure until three business days before consummation of that transaction on or about June 1 of the following year, in accordance with § 1026.19(f)(1)(ii). The creditor may also issue a revised Loan Estimate for the permanent financing at any time prior to 60 days before consummation, following the procedures under § 1026.19(e)(3)(iv)(F).

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19(e)(1)(vi) Shopping for settlement service providers.

1. *Permission to shop*. Section 1026.19(e)(1)(vi)(A) permits creditors to impose reasonable requirements regarding the qualifications of the provider. For example, the creditor may require that a settlement agent chosen by the consumer must be appropriately licensed in the relevant jurisdiction. In contrast, a creditor does not permit a consumer to shop for purposes of § 1026.19(e)(1)(vi) if the creditor requires the consumer to choose a provider from a list provided by the creditor. Whether the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances. The requirements of § 1026.19(e)(1)(vi)(B) and (C) do not apply if the creditor does not permit the consumer to shop consistent with § 1026.19(e)(1)(vi)(A).

2. *Disclosure of services for which the consumer may shop.* If a creditor permits a consumer to shop for a settlement service, § 1026.19(e)(1)(vi)(B) requires the creditor to identify settlement services required by the creditor for which the consumer is permitted to shop in the disclosures provided pursuant to §1026.19(e)(1)(i). See § 1026.37(f)(3) regarding the content and format for disclosure of services required by the creditor for which the consumer is permitted to shop.

3. *Written list of providers.* If the creditor permits the consumer to shop for a settlement service it requires, § 1026.19(e)(1)(vi)(C) requires the creditor to provide the consumer with a written list identifying at least one available provider of that service and stating that the consumer may choose a different provider for that service. The settlement service providers identified on the written list required by § 1026.19(e)(1)(vi)(C) must correspond to the required settlement services for which the consumer may shop, disclosed under § 1026.37(f)(3). See form H-27 in appendix H to this part for a model list. Creditors using form H-27 in appendix H properly are deemed to be in compliance with § 1026.19(e)(1)(vi)(C). Creditors may make changes in the format or content of form H-27 in appendix H and be deemed to be in compliance with § 1026.19(e)(1)(vi)(C), so long as the changes do not affect the substance, clarity, or meaningful sequence of the form. An acceptable change to form H-27 in appendix H includes, for example, deleting the column for estimated fee amounts.

4. *Identification of available providers*. Section 1026.19(e)(1)(vi)(C) provides that the creditor must identify settlement service providers, that are available to the consumer, for the settlement services that are required by the creditor for which a consumer is permitted to shop. A creditor does not comply with the identification requirement in § 1026.19(e)(1)(vi)(C) unless it provides sufficient information to allow the consumer to contact the provider, such as the name

under which the provider does business and the provider's address and telephone number. Similarly, a creditor does not comply with the availability requirement in § 1026.19(e)(1)(vi)(C) if it provides a written list consisting of only settlement service providers that are no longer in business or that do not provide services where the consumer or property is located.

* * * * *

19(e)(3) Good faith determination for estimates of closing costs.

19(e)(3)(i) General rule.

1. *Requirement*. Section 1026.19(e)(3)(i) provides the general rule that an estimated closing cost disclosed under § 1026.19(e) is not in good faith if the charge paid by or imposed on the consumer exceeds the amount originally disclosed under § 1026.19(e)(1)(i). Although § 1026.19(e)(3)(ii) and (iii) provide exceptions to the general rule, the charges that are generally subject to § 1026.19(e)(3)(i) include, but are not limited to, the following:

i. Fees paid to the creditor.

ii. Fees paid to a mortgage broker.

iii. Fees paid to an affiliate of the creditor or a mortgage broker.

iv. Fees paid to an unaffiliated third party if the creditor did not permit the consumer to shop for a third party service provider for a settlement service.

v. Transfer taxes.

* * * * *

19(e)(3)(ii) Limited increases permitted for certain charges.

1. *Requirements*. Section 1026.19(e)(3)(ii) provides that certain estimated charges are in good faith if the sum of all such charges paid by or imposed on the consumer does not exceed the

sum of all such charges disclosed pursuant to § 1026.19(e) by more than 10 percent. Section 1026.19(e)(3)(ii) permits this limited increase for only the following items:

i. Fees paid to an unaffiliated third party if the creditor permitted the consumer to shop for the third-party service, consistent with § 1026.19(e)(1)(vi)(A).

ii. Recording fees.

2. *Aggregate increase limited to ten percent.* Under § 1026.19(e)(3)(ii)(A), whether an individual estimated charge subject to § 1026.19(e)(3)(ii) is in good faith depends on whether the sum of all charges subject to § 1026.19(e)(3)(ii) increases by more than 10 percent, regardless of whether a particular charge increases by more than 10 percent. This is true even if an individual charge was omitted from the estimate provided under § 1026.19(e)(1)(i) and then imposed at consummation. The following examples illustrate the determination of good faith for charges subject to § 1026.19(e)(3)(ii):

i. Assume that, in the disclosures provided under § 1026.19(e)(1)(i), the creditor includes a $300 estimated fee for a settlement agent, the settlement agent fee is included in the category of charges subject to § 1026.19(e)(3)(ii), and the sum of all charges subject to § 1026.19(e)(3)(ii) (including the settlement agent fee) equals $1,000. In this case, the creditor does not violate § 1026.19(e)(3)(ii) if the actual settlement agent fee exceeds the estimated settlement agent fee by more than 10 percent (*i.e.*, the fee exceeds $330), provided that the sum of all such actual charges does not exceed the sum of all such estimated charges by more than 10 percent (*i.e.*, the sum of all such charges does not exceed $1,100).

ii. Assume that, in the disclosures provided under § 1026.19(e)(1)(i), the sum of all estimated charges subject to § 1026.19(e)(3)(ii) equals $1,000. If the creditor does not include an estimated charge for a notary fee but a $10 notary fee is charged to the consumer, and the

notary fee is subject to § 1026.19(e)(3)(ii), then the creditor does not violate § 1026.19(e)(1)(i) if the sum of all amounts charged to the consumer subject to § 1026.19(e)(3)(ii) does not exceed $1,100, even though an individual notary fee was not included in the estimated disclosures provided under § 1026.19(e)(1)(i).

* * * * *

6. *Shopping for a third-party service*. For good faith to be determined under § 1026.19(e)(3)(ii) a creditor must permit a consumer to shop consistent with § 1026.19(e)(1)(vi)(A). Section 1026.19(e)(1)(vi)(A) provides that a creditor permits a consumer to shop for a settlement service if the creditor permits the consumer to select the provider of that service, subject to reasonable requirements. If the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) good faith is determined under § 1026.19(e)(3)(ii), unless the settlement service provider is the creditor or an affiliate of the creditor, in which case good faith is determined under § 1026.19(e)(3)(i). As noted in comment 19(e)(1)(vi)-1, whether the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances.

19(e)(3)(iii) Variations permitted for certain charges.

* * * * *

2. *Good faith requirement for required services chosen by the consumer*. If a service is required by the creditor, the creditor permits the consumer to shop for that service consistent with § 1026.19(e)(1)(vi)(A), the creditor provides the list required under § 1026.19(e)(1)(vi)(C), and the consumer chooses a service provider that is not on that list to perform that service, then the actual amounts of such fees need not be compared to the original estimates for such fees to perform the good faith analysis required under § 1026.19(e)(3)(i) or (ii). Differences between

the amounts of such charges disclosed under § 1026.19(e)(1)(i) and the amounts of such charges paid by or imposed on the consumer do not constitute a lack of good faith, so long as the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided. For example, if the consumer informs the creditor that the consumer will choose a settlement agent not identified by the creditor on the written list provided under § 1026.19(e)(1)(vi)(C), and the creditor discloses an unreasonably low estimated settlement agent fee of $20 when the average prices for settlement agent fees in that area are $150, then the under-disclosure does not comply with § 1026.19(e)(3)(iii) and good faith is determined under § 1026.19(e)(3)(i). If the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the written list required under § 1026.19(e)(1)(vi)(C), good faith is determined under § 1026.19(e)(3)(ii) instead of § 1026.19(e)(3)(iii) unless the settlement service provider is the creditor or an affiliate of the creditor in which case good faith is determined under § 1026.19(e)(3)(i). As noted in comment 19(e)(1)(vi)-1 whether the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances.

3. *Good faith requirement for property taxes or non-required services chosen by the consumer*. Differences between the amounts of estimated charges for property taxes or services not required by the creditor disclosed under § 1026.19(e)(1)(i) and the amounts of such charges paid by or imposed on the consumer do not constitute a lack of good faith, so long as the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided. For example, if the consumer informs the creditor that the consumer will obtain a type of inspection

not required by the creditor, the creditor must include the charge for that item in the disclosures provided under § 1026.19(e)(1)(i), but the actual amount of the inspection fee need not be compared to the original estimate for the inspection fee to perform the good faith analysis required by § 1026.19(e)(3)(iii). The original estimated charge, or lack of an estimated charge for a particular service, complies with § 1026.19(e)(3)(iii) if it is made based on the best information reasonably available to the creditor at the time that the estimate was provided. But, for example, if the subject property is located in a jurisdiction where consumers are customarily represented at closing by their own attorney, even though it is not a requirement, and the creditor fails to include a fee for the consumer's attorney, or includes an unreasonably low estimate for such fee, on the original estimates provided under § 1026.19(e)(1)(i), then the creditor's failure to disclose, or unreasonably low estimation, does not comply with § 1026.19(e)(3)(iii). Similarly, the amount disclosed for property taxes must be based on the best information reasonably available to the creditor at the time the disclosure was provided. For example, if the creditor fails to include a charge for property taxes, or includes an unreasonably low estimate for that charge, on the original estimates provided under § 1026.19(e)(1)(i), then the creditor's failure to disclose, or unreasonably low estimation, does not comply with § 1026.19(e)(3)(iii) and the charge for property tax would be subject to the good faith determination under § 1026.19(e)(3)(i).

4. *Bona fide charges*. In covered transactions, § 1026.19(e)(1)(i) requires the creditor to provide the consumer with good faith estimates of the disclosures in § 1026.37. Section 1026.19(e)(3)(iii) provides that an estimate of the charges listed in § 1026.19(e)(3)(iii) is in good faith if it is consistent with the best information reasonably available to the creditor at the time the disclosure is provided and that good faith is determined under § 1026.19(e)(3)(iii) even if

such charges are paid to the creditor or affiliates of the creditor, so long as the charges are bona fide. For determining good faith under § 1026.19(e)(1)(i), to be bona fide, charges must be lawful and for services that are actually performed.

19(e)(3)(iv) Revised estimates.

* * * * *

2. *Actual increase*. A creditor may determine good faith under § 1026.19(e)(3)(i) and (ii) based on the increased charges reflected on revised disclosures only to the extent that the reason for revision, as identified in § 1026.19(e)(3)(iv)(A) through (F), actually increased the particular charge. For example, if a consumer requests a rate lock extension, then the revised disclosures on which a creditor relies for purposes of determining good faith under § 1026.19(e)(3)(i) may reflect a new rate lock extension fee, but the fee may be no more than the rate lock extension fee charged by the creditor in its usual course of business, and the creditor may not rely on changes to other charges unrelated to the rate lock extension for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii).

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4. *Revised disclosures for general informational purposes*. Section 1026.19(e)(3)(iv) does not prohibit the creditor from issuing revised disclosures for informational purposes, *e.g.*, to keep the consumer apprised of updated information, even if the revised disclosures may not be used for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii). See comment 19(e)(3)(iv)(A)-1.ii for an example in which the creditor issues revised disclosures even though the sum of all costs subject to the 10 percent tolerance category has not increased by more than 10 percent.

5. *Best information reasonably available*. Regardless of whether a creditor may use particular disclosures for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii), except as otherwise provided in § 1026.19(e), any disclosures must be based on the best information reasonably available to the creditor at the time they are provided to the consumer. *See* § 1026.17(c)(2)(i) and comment 17(c)(2)(i)-1. For example, if the creditor issues revised disclosures reflecting a new rate lock extension fee for purposes of determining good faith under § 1026.19(e)(3)(i), other charges unrelated to the rate lock extension must be reflected on the revised disclosures based on the best information reasonably available to the creditor at the time the revised disclosures are provided. Nonetheless, any increases in those other charges unrelated to the rate lock extension may not be used for the purposes of determining good faith under § 1026.19(e)(3).

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19(e)(3)(iv)(D) Interest rate dependent charges.

1. *Requirements.* If the interest rate is not locked when the disclosures required by § 1026.19(e)(1)(i) are provided, then, no later than three business days after the date the interest rate is subsequently locked, § 1026.19(e)(3)(iv)(D) requires the creditor to provide a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised interest rate, the points disclosed under § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms. The following example illustrates this requirement:

i. Assume a creditor sets the interest rate by executing a rate lock agreement with the consumer. If such an agreement exists when the original disclosures required under § 1026.19(e)(1)(i) are provided, then the actual points and lender credits are compared to the estimated points disclosed under § 1026.37(f)(1) and lender credits included in the original

disclosures provided under § 1026.19(e)(1)(i) for the purpose of determining good faith under § 1026.19(e)(3)(i). If the consumer enters into a rate lock agreement with the creditor after the disclosures required under § 1026.19(e)(1)(i) were provided, then § 1026.19(e)(3)(iv)(D) requires the creditor to provide, no later than three business days after the date that the consumer and the creditor enter into a rate lock agreement, a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised interest rate, the points disclosed under § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms. Provided that the revised version of the disclosures required under § 1026.19(e)(1)(i) reflect any revised points disclosed under § 1026.37(f)(1) and lender credits, the actual points and lender credits are compared to the revised points and lender credits for the purpose of determining good faith under § 1026.19(e)(3)(i).

2. *After the Closing Disclosure is provided*. Under § 1026.19(e)(3)(iv)(D), no later than three business days after the date the interest rate is locked, the creditor must provide to the consumer a revised version of the Loan Estimate as required by § 1026.19(e)(1)(i). Section 1026.19(e)(4)(ii) prohibits a creditor from providing a revised version of the Loan Estimate as required by § 1026.19(e)(1)(i) on or after the date on which the creditor provides the Closing Disclosure as required by § 1026.19(f)(1)(i). If the interest rate is locked on or after the date on which the creditor provides the Closing Disclosure and the Closing Disclosure is inaccurate as a result, then the creditor must provide the consumer a corrected Closing Disclosure, at or before consummation, reflecting any changed terms, pursuant to § 1026.19(f)(2). If the rate lock causes the Closing Disclosure to become inaccurate before consummation in a manner listed in § 1026.19(f)(2)(ii), the creditor must ensure that the consumer receives a corrected Closing Disclosure no later than three business days before consummation, as provided in that paragraph.

19(e)(3)(iv)(E) Expiration.

1. *Requirements*. If the consumer indicates an intent to proceed with the transaction more than 10 business days after the disclosures were originally provided under § 1026.19(e)(1)(iii), for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), a creditor may use a revised estimate of a charge instead of the amount originally disclosed under § 1026.19(e)(1)(i). Section 1026.19(e)(3)(iv)(E) requires no justification for the change to the original estimate other than the lapse of 10 business days. For example, assume a creditor includes a $500 underwriting fee on the disclosures provided under § 1026.19(e)(1)(i) and the creditor delivers those disclosures on a Monday. If the consumer indicates intent to proceed 11 business days later, the creditor may provide new disclosures with a $700 underwriting fee. In this example, § 1026.19(e) and § 1026.25 require the creditor to document that a new disclosure was provided under § 1026.19(e)(3)(iv)(E) but do not require the creditor to document a reason for the increase in the underwriting fee.

2. *Longer time period*. For transactions in which the interest rate is locked for a specific period of time, § 1026.37(a)(13)(ii) requires the creditor to provide the date and time (including the applicable time zone) when that period ends. If the creditor establishes a period greater than 10 business days after the disclosures were originally provided (or subsequently extends it to such a longer period) before the estimated closing costs expire, notwithstanding the 10-business-day period discussed in comment 19(e)(3)(iv)(E)-1, that longer time period becomes the relevant time period for purposes of § 1026.19(e)(3)(iv)(E). Accordingly, in such a case, the creditor may not issue revised disclosures for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii) under § 1026.19(e)(3)(iv)(E) until after the longer time period has expired. A creditor establishes such a period greater than 10 business days by communicating the greater time period

to the consumer, including through oral communication.

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19(f) Mortgage loans—Final disclosures.

19(f)(1) Provision of disclosures.

19(f)(1)(i) Scope.

1. *Requirements.* Section 1026.19(f)(1)(i) requires disclosure of the actual terms of the credit transaction, and the actual costs associated with the settlement of that transaction, for closed-end credit transactions that are secured by real property or a cooperative unit, other than reverse mortgages subject to § 1026.33. For example, if the creditor requires the consumer to pay money into a reserve account for the future payment of taxes, the creditor must disclose to the consumer the exact amount that the consumer is required to pay into the reserve account. If the disclosures provided under § 1026.19(f)(1)(i) do not contain the actual terms of the transaction, the creditor does not violate § 1026.19(f)(1)(i) if the creditor provides corrected disclosures that contain the actual terms of the transaction and complies with the other requirements of § 1026.19(f), including the timing requirements in § 1026.19(f)(1)(ii) and (f)(2). For example, if the creditor provides the disclosures required by § 1026.19(f)(1)(i) on Monday, June 1, but the consumer adds a mobile notary service to the terms of the transaction on Tuesday, June 2, the creditor complies with § 1026.19(f)(1)(i) if it provides disclosures reflecting the revised terms of the transaction on or after Tuesday, June 2, assuming that the corrected disclosures are also provided at or before consummation, under § 1026.19(f)(2)(i).

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19(f)(2) Subsequent changes.

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19(f)(2)(iii) Changes due to events occurring after consummation.

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2. *Per-diem interest.* Under § 1026.19(f)(2)(iii), if during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes the disclosures to become inaccurate, and such inaccuracy results in a change to an amount actually paid by the consumer from that amount disclosed under § 1026.19(f)(1)(i), the creditor must provide the consumer corrected disclosures, except as described in this comment. A creditor is not required to provide corrected disclosures under § 1026.19(f)(2)(iii) if the only changes that would be required to be disclosed in the corrected disclosure are changes to per-diem interest and any disclosures affected by the change in per-diem interest, even if the amount of per-diem interest actually paid by the consumer differs from the amount disclosed under § 1026.38(g)(2) and (o). Nonetheless, if a creditor is providing a corrected disclosure under § 1026.19(f)(2)(iii) for reasons other than changes in per-diem interest and the per-diem interest has changed as well, the creditor must disclose in the corrected disclosures under § 1026.19(f)(2)(iii) the correct amount of the per-diem interest and provide corrected disclosures for any disclosures that are affected by the change in per-diem interest.

* * * * *

19(f)(2)(v) Refunds related to the good faith analysis.

1. *Requirements*. Section 1026.19(f)(2)(v) provides that, if amounts paid at consummation exceed the amounts specified under § 1026.19(e)(3)(i) or (ii), the creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers or places in the mail disclosures corrected to reflect the refund of such excess no later

than 60 days after consummation. For example, assume that at consummation the consumer must pay four itemized charges that are subject to the good faith determination under § 1026.19(e)(3)(i). If the actual amounts paid by the consumer for the four itemized charges subject to § 1026.19(e)(3)(i) exceed their respective estimates on the disclosures required under § 1026.19(e)(1)(i) by $30, $25, $25, and $15, then the total would exceed the limitations prescribed by § 1026.19(e)(3)(i) by $95. If, further, the amounts paid by the consumer for services that are subject to the good faith determination under § 1026.19(e)(3)(ii) totaled $1,190, but the respective estimates on the disclosures required under § 1026.19(e)(1)(i) totaled only $1,000, then the total would exceed the limitations prescribed by § 1026.19(e)(3)(ii) by $90. The creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds $185 to the consumer no later than 60 days after consummation. The creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers or places in the mail corrected disclosures reflecting the $185 refund of the excess amount collected no later than 60 days after consummation. See comments 38-4 and 38(h)(3)-2 for additional guidance on disclosing refunds.

19(f)(3) Charges disclosed.

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19(f)(3)(ii) Average charge.

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3. *Uniform use.* If a creditor chooses to use an average charge for a settlement service for a particular loan within a class, § 1026.19(f)(3)(ii)(C) requires the creditor to use that average charge for that service on all loans within the class. For example:

i. Assume a creditor elects to use an average charge for appraisal fees. The creditor defines a class of transactions as all fixed rate loans originated between January 1 and April 30

secured by real property or a cooperative unit located within a particular metropolitan statistical area. The creditor must then charge the average appraisal charge to all consumers obtaining fixed rate loans originated between May 1 and August 30 secured by real property or a cooperative unit located within the same metropolitan statistical area.

ii. The example in paragraph i of this comment assumes that a consumer would not be required to pay the average appraisal charge unless an appraisal was required on that particular loan. Using the example above, if a consumer applies for a loan within the defined class, but already has an appraisal report acceptable to the creditor from a prior loan application, the creditor may not charge the consumer the average appraisal fee because an acceptable appraisal report has already been obtained for the consumer's application. Similarly, although the creditor defined the class broadly to include all fixed rate loans, the creditor may not require the consumer to pay the average appraisal charge if the particular fixed rate loan program the consumer applied for does not require an appraisal.

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19(f)(4) Transactions involving a seller.

19(f)(4)(i) Provision to seller.

1. *Requirement*. Section 1026.19(f)(4)(i) requires the settlement agent to provide the seller with the disclosures required under § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction. The settlement agent complies with this provision by providing a copy of the Closing Disclosure provided to the consumer, if the Closing Disclosure also contains the information under § 1026.38 relating to the seller's transaction or, alternatively, by providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable.

2. *Simultaneous subordinate financing*. In a purchase transaction with simultaneous subordinate financing, the settlement agent complies with § 1026.19(f)(4)(i) by providing the seller with only the first-lien transaction disclosures required under § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction in accordance with comment 19(f)(4)(i)-1 if the first-lien Closing Disclosure records the entirety of the seller's transaction. If the first-lien Closing Disclosure does not record the entirety of the seller's transaction, the settlement agent complies with § 1026.19(f)(4)(i) by providing the seller with both the first-lien and simultaneous subordinate financing transaction disclosures required under § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction in accordance with comment 19(f)(4)(i)-1.

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Section 1026.23—Right of Rescission

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23(g) Tolerances for Accuracy

1. *Example.* See comment 38(o)-1 for examples illustrating the interaction of the finance charge and total of payments accuracy requirements for each transaction subject to § 1026.19(e) and (f).

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23(h) Special Rules for Foreclosures

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23(h)(2) Tolerance for Disclosures

1. *General.* The tolerance for disclosure of the finance charge is based on the accuracy of the total finance charge rather than its component charges. For transactions subject to § 1026.19(e) and (f), the tolerance for disclosure of the total of payments is based on the accuracy of the total of payments, taken as a whole, rather than its component charges.

2. *Example.* See comment 38(o)-1 for examples illustrating the interaction of the finance charge and total of payments accuracy requirements for each transaction subject to § 1026.19(e) and (f).

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Section 1026.25—Record Retention

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25(c) Records Related to Certain Requirements for Mortgage Loans.

25(c)(1) Records related to requirements for loans secured by real property or a cooperative unit.

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Section 1026.37—Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)

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37(a) General information.

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37(a)(7) Sale price.

1. *Estimated property value.* In transactions where there is no seller, such as in a refinancing, § 1026.37(a)(7)(ii) requires the creditor to disclose the estimated value of the property identified in § 1026.37(a)(6) based on the best information reasonably available to the

creditor at the time the disclosure is provided to the consumer, which may include, at the creditor's option, the estimated value of the improvements to be made on the property in transactions involving construction. The creditor may use the estimate provided by the consumer at application unless it has performed its own estimate of the property value by the time the disclosure is provided to the consumer, in which case the creditor must use its own estimate. If the creditor has obtained any appraisals or valuations of the property for the application at the time the disclosure is issued to the consumer, the value determined by the appraisal or valuation to be used during underwriting for the application is disclosed as the estimated property value. If the creditor has obtained multiple appraisals or valuations and has not yet determined which one will be used during underwriting, it may disclose the value from any appraisal or valuation it reasonably believes it may use in underwriting the transaction. In a transaction that involves a seller, if the sale price is not yet known, the creditor complies with § 1026.37(a)(7) if it discloses the estimated value of the property that it used as the basis for the disclosures in the Loan Estimate.

2. *Personal property.* In transactions involving personal property that is separately valued from real property, only the value of the real property or cooperative unit is disclosed under § 1026.37(a)(7). Where personal property is included in the sale price of the real property or cooperative unit (for example, if the consumer is purchasing the furniture inside the dwelling), however, § 1026.37(a)(7) permits disclosure of the aggregate price without any reduction for the appraised or estimated value of the personal property.

37(a)(8) Loan term.

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3. *Loan term start date*. See comment app. D-7.i for an explanation of how a creditor discloses the loan term of a multiple-advance loan to finance the construction of a dwelling that may be permanently financed by the same creditor.

37(a)(9) Purpose.

1. *General.* Section 1026.37(a)(9) requires disclosure of the consumer's intended use of the credit. In ascertaining the consumer's intended use, § 1026.37(a)(9) requires the creditor to consider all relevant information known to the creditor at the time of the disclosure. If the purpose is not known, the creditor may rely on the consumer's stated purpose. The following examples illustrate when each of the permissible purposes should be disclosed:

i. *Purchase*. The consumer intends to use the proceeds from the transaction to purchase the property that will secure the extension of credit. In a purchase transaction with simultaneous subordinate financing, the simultaneous subordinate loan is also disclosed with the purpose "Purchase."

ii. *Refinance.* The consumer refinances an existing obligation already secured by the consumer's dwelling to change the rate, term, or other loan features and may or may not receive cash from the transaction. For example, in a refinance with no cash provided, the new amount financed does not exceed the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing. Conversely, in a refinance with cash provided, the consumer refinances an existing mortgage obligation and receives money from the transaction that is in addition to the funds used to pay the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing. In such a transaction, the consumer may, for example, use

the newly-extended credit to pay off the balance of the existing mortgage and other consumer debt, such as a credit card balance.

iii. *Construction*. Section 1026.37(a)(9)(iii) requires the creditor to disclose that the loan is for construction in transactions where the creditor extends credit to finance only the cost of initial construction (construction-only loan), not renovations to existing dwellings, and in transactions where a multiple advance loan may be permanently financed by the same creditor (construction-permanent loan). In a construction-only loan, the borrower may be required to make interest-only payments during the loan term with the balance commonly due at the end of the construction project. For additional guidance on disclosing construction-permanent loans, see § 1026.17(c)(6)(ii), comments 17(c)(6)-2, -3, and -5, and appendix D to this part.

iv. *Home equity loan.* The creditor is required to disclose that the credit is for a "home equity loan" if the creditor intends to extend credit for any purpose other than a purchase, refinancing, or construction. This disclosure applies whether the loan is secured by a first or subordinate lien.

* * * * *

37(a)(10) Product.

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2. *Additional features*. When disclosing a loan product with at least one of the features described in § 1026.37(a)(10)(ii), § 1026.37(a)(10)(iii) and (iv) require the disclosure of only the first applicable feature in the order of § 1026.37(a)(10)(ii) and that it be preceded by the time period or the length of the introductory period and the frequency of the first adjustment period, as applicable, followed by a description of the loan product and its time period as provided for in § 1026.37(a)(10)(i). For example:

i. *Negative amortization.* Some loan products, such as "payment option" loans, permit the borrower to make payments that are insufficient to cover all of the interest accrued, and the unpaid interest is added to the principal balance. Where the loan product includes a loan feature that may cause the loan balance to increase, the disclosure required by § 1026.37(a)(10)(ii)(A) is preceded by the time period that the borrower is permitted to make payments that result in negative amortization (*e.g.,* "2 Year Negative Amortization"), followed by the loan product type. Thus, a fixed rate product with a step-payment feature for the first two years of the legal obligation that may negatively amortize is disclosed as "2 Year Negative Amortization, Fixed Rate."

ii. *Interest only.* When disclosing an "Interest Only" feature, as defined in § 1026.18(s)(7)(iv), the applicable time period must precede the label "Interest Only." Thus, a fixed rate loan with only interest due for the first five years of the loan term is disclosed as "5 Year Interest Only, Fixed Rate." If the interest only feature fails to cover the total interest due, then, as required by § 1026.37(a)(10)(iii), the disclosure must reference the negative amortization feature and not the interest only feature (*e.g.*, "5 Year Negative Amortization, Fixed Rate"). See comment app. D-7.ii for an explanation of the disclosure of the time period of an interest only feature for a construction loan or a construction-permanent loan.

iii. *Step payment.* When disclosing a step payment feature (which is sometimes referred to instead as a graduated payment), the period of time at the end of which the scheduled payments will change must precede the label "Step Payment" (*e.g.,* "5 Year Step Payment") followed by the name of the loan product. Thus, a fixed rate mortgage subject to a 5-year step payment plan is disclosed as a "5 Year Step Payment, Fixed Rate."

iv. *Balloon payment.* If a loan product includes a "balloon payment," as that term is defined in § 1026.37(b)(5), the disclosure of the balloon payment feature, including the year the payment is due, precedes the disclosure of the loan product. Thus, if the loan product is a step rate with an introductory rate that lasts for three years and adjusts each year thereafter until the balloon payment is due in the seventh year of the loan term, the disclosure required is "Year 7 Balloon Payment, 3/1 Step Rate." If the loan product includes more than one balloon payment, only the earliest year that a balloon payment is due shall be disclosed.

v. *Seasonal payment.* If a loan product includes a seasonal payment feature, § 1026.37(a)(10)(ii)(E) requires that the creditor disclose the feature. The feature is not, however, required to be disclosed with any preceding time period. Disclosure of the label "Seasonal Payment" without any preceding number of years satisfies this requirement.

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37(a)(13) Rate lock.

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2. *Expiration date*. The disclosure required by § 1026.37(a)(13)(ii) related to estimated closing costs is required regardless of whether the interest rate is locked for a specific period of time or whether the terms and costs are otherwise accepted or extended. If the consumer fails to indicate an intent to proceed with the transaction within 10 business days after the disclosures were originally provided under § 1026.19(e)(1)(iii) (or within any longer time period established by the creditor), then, for determining good faith under § 1026.19(e)(3)(i) and (ii), a creditor may use a revised estimate of a charge instead of the amount originally disclosed under § 1026.19(e)(1)(i). *See* comment 19(e)(3)(iv)(E)-2.

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4. *Revised disclosures*. Once the consumer indicates an intent to proceed within the time specified by the creditor under § 1026.37(a)(13)(ii), the date and time at which estimated closing costs expire are left blank on any subsequent revised disclosures. The creditor may extend the period of availability to expire beyond the time disclosed under § 1026.37(a)(13)(ii). If the consumer indicates an intent to proceed within that longer time period, the date and time at which estimated closing costs expire are left blank on subsequent revised disclosures, if any. *See* comment 19(e)(3)(iv)-5.

37(b) Loan terms.

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37(b)(2) Interest rate.

1. *Interest rate at consummation not known*. Where the interest rate that will apply at consummation is not known at the time the creditor must deliver the disclosures required by § 1026.19(e), § 1026.37(b)(2) requires disclosure of the fully-indexed rate, defined as the index plus the margin at consummation. Although § 1026.37(b)(2) refers to the index plus margin "at consummation," if the index value that will be in effect at consummation is unknown at the time the disclosures are provided under § 1026.19(e)(1)(iii), i.e., within three business days after receipt of a consumer's application, the fully-indexed rate disclosed under § 1026.37(b)(2) may be based on the index in effect at the time the disclosure is delivered. The index in effect at consummation (or the time the disclosure is delivered under § 1026.19(e)) need not be used if the contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, creditors may use any index value in effect during the 45 days before consummation (or any earlier date of disclosure) in calculating the fully-indexed rate to be

disclosed. See comment app. D-7.iii for an explanation of the disclosure of the permanent financing interest rate for a construction-permanent loan.

37(b)(3) Principal and interest payment.

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2. *Initial periodic payment if not known.* Under § 1026.37(b)(3), the initial periodic payment amount that will be due under the terms of the legal obligation must be disclosed. If the initial periodic payment is not known because it will be based on an interest rate at consummation that is not known at the time the disclosures required by § 1026.19(e) must be provided, for example, if it is based on an external index that may fluctuate before consummation, § 1026.37(b)(3) requires that the disclosure be based on the fully-indexed rate disclosed under § 1026.37(b)(2). See comment 37(b)(2)-1 for guidance regarding calculating the fully-indexed rate.

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37(b)(6) Adjustments after consummation.

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37(b)(6)(iii) Increase in periodic payment.

1. *Additional information regarding increase in periodic payment*. A creditor complies with the requirement under § 1026.37(b)(6)(iii) to disclose additional information indicating the scheduled frequency of adjustments to the periodic principal and interest payment by using the phrases "Adjusts every" and "starting in." A creditor complies with the requirement under § 1026.37(b)(6)(iii) to disclose additional information indicating the maximum possible periodic principal and interest payment, and the date when the periodic principal and interest payment may first equal the maximum principal and interest payment by using the phrase "Can go as high

as" and then indicating the date at the end of that phrase or, for a scheduled maximum amount, such as under a step payment loan, "Goes as high as." A creditor complies with the requirement under § 1026.37(b)(6)(iii) to indicate that there is a period during which only interest is required to be paid and the due date of the last periodic payment of such period using the phrase "Includes only interest and no principal until." See form H-24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3). See comment app. D-7.iv for an explanation of the disclosure of an increase in the periodic payment for a construction or construction-permanent loan.

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37(c) Projected payments.

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2. *Construction loans*. See comment app. D-7.v for an explanation of the projected payments disclosure for a construction or construction-permanent loan.

37(c)(1) Periodic payment or range of payments.

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Paragraph 37(c)(1)(iii).

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Paragraph 37(c)(1)(iii)(B).

1. *Multiple events occurring in a single year*. If multiple changes to periodic principal and interest payments would result in more than one separate periodic payment or range of payments in a single year, § 1026.37(c)(1)(iii)(B) requires the creditor to disclose the range of payments that would apply during the year in which the events occur. For example:

i. Assume a loan with a 30-year term with a payment that adjusts every month for the first 12 months and is fixed thereafter, where mortgage insurance is not required, and where no escrow account would be established for the payment of charges described in § 1026.37(c)(4)(ii). The creditor discloses as a single range of payments the initial periodic payment and the periodic payment that would apply after each payment adjustment during the first 12 months, which single range represents the minimum payment and maximum payment, respectively. Under § 1026.37(c)(1)(i)(D), the creditor also discloses, as an additional separate periodic payment or range of payments, the periodic principal and interest payment or range of payments that would apply after the payment becomes fixed.

ii. Assume instead a loan with a 30-year term with a payment that adjusts upward at three months and at six months and is fixed thereafter, where mortgage insurance is not required, and where no escrow account would be established for the payment of charges described in § 1026.37(c)(4)(ii). The creditor discloses as a single range of payments the initial periodic payment, the periodic payment that would apply after the payment adjustment that occurs at three months, and the periodic payment that would apply after the payment adjustment that occurs at six months, which single range represents the minimum payment and maximum payment, respectively, which would apply during the first year of the loan. Under § 1026.37(c)(1)(i)(D), the creditor also discloses as an additional separate periodic payment or range of payments, the principal and interest payment that would apply on the first anniversary of the due date of the initial periodic payment or range of payments, because that is the anniversary that immediately follows the occurrence of the multiple payments or ranges of payments that occurred during the first year of the loan.

iii. Assume that the same loan has a payment that, instead of becoming fixed after the adjustment at six months, adjusts once more at 18 months and becomes fixed thereafter. The creditor discloses the same single range of payments for year one. Under § 1026.37(c)(1)(i)(D), the creditor separately discloses the principal and interest payment that would apply on the first anniversary of the due date of the initial periodic payment in year two. Under § 1026.37(c)(1)(i)(A) and (c)(3)(ii), beginning in the next year in the sequence (*i.e.*, in year three), the creditor separately discloses the periodic payment that would apply after the payment adjustment that occurs at 18 months. See comment 37(c)(3)(ii)-1 regarding subheadings that state the years.

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37(c)(4) Taxes, insurance, and assessments.

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Paragraph 37(c)(4)(iv).

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2. *Amounts paid by the creditor using escrow account funds.* Section 1026.37(c)(4)(iv) requires the creditor to disclose an indication of whether the amounts disclosed under § 1026.37(c)(4)(ii) will be paid by the creditor using escrow account funds. If only a portion of the amounts disclosed under § 1026.37(c)(4)(ii), including, without limitation, property taxes, homeowner's insurance, and assessments, will be paid by the creditor using escrow account funds, the creditor may indicate that only a portion of the amounts disclosed will be paid using escrow account funds, such as by using the word "some."

37(d) Costs at closing.

37(d)(2) Optional alternative table for transactions without a seller or for simultaneous subordinate financing.

1. *Optional use*. The optional alternative disclosure of the estimated cash to close provided for in § 1026.37(d)(2) may be used by a creditor only in a transaction without a seller or a simultaneous subordinate financing transaction. In a purchase transaction, the optional alternative disclosure may be used for the simultaneous subordinate financing Loan Estimate only if the first-lien Closing Disclosure will record the entirety of the seller's transaction. Creditors may only use this alternative estimated cash to close disclosure in conjunction with the alternative disclosure under § 1026.37(h)(2).

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37(f) Closing cost details; loan costs.

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3. *Construction loan inspection and handling fees*. Inspection and handling fees for the staged disbursement of construction loan proceeds, including draw fees, are loan costs associated with the transaction for purposes of § 1026.37(f). If inspection and handling fees are collected at or before consummation, the total of such fees is disclosed in the loan costs table. If inspection and handling fees will be collected after consummation, the total of such fees is disclosed in a separate addendum and the fees are not counted for purposes of the calculating cash to close table. See comment 37(f)(6)-3 for a description of an addendum used to disclose inspection and handling fees that will be collected after consummation. See also comments 38(f)-2 and app. D-7.vii. If the number of inspections and disbursements is not known at the time the disclosures are provided, the creditor discloses the fees that will be

collected based on the best information reasonably available to the creditor at the time the disclosure is provided. *See* comment 19(e)(1)(i)-1. See § 1026.17(e) and its commentary for an explanation of the effect of subsequent events that cause inaccuracies in disclosures.

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37(f)(6) Use of addenda.

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3. Addendum for post-consummation inspection and handling fees. A creditor makes the disclosures required by § 1026.37(f) and comment 37(f)-3 for construction loan inspection and handling fees collected after consummation by disclosing the total of such fees under the heading "Inspection and Handling Fees Collected After Closing" in an addendum, which may be the addendum pursuant to § 1026.37(f)(6) or any other addendum or additional page under § 1026.37. *See* comment 37(o)(1)-1. For purposes of comment 38(f)-2, the addendum may be any addendum or additional page under § 1026.38. If the actual amount of such fees is not known at the time the disclosures are provided, the disclosures in the addendum are based upon the best information reasonably available to the creditor at the time the disclosure is provided. *See* comment 19(e)(1)(i)-1. For example, such information could include amounts the creditor has previously charged in similar construction transactions or the amount of estimated inspection and handling fees used by the creditor for purposes of setting the construction loan's commitment amount.

37(g) Closing cost details; other costs.

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37(g)(6) Total closing costs.

Paragraph 37(g)(6)(ii).

1. *Lender credits*. Section 1026.19(e)(1)(i) requires disclosure of lender credits as provided in § 1026.37(g)(6)(ii). Such lender credits include non-specific lender credits as well as specific lender credits. *See* comment 19(e)(3)(i)-5.

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37(h) Calculating cash to close.

37(h)(1) For all transactions.

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2. *Simultaneous subordinate financing*. On the Loan Estimate for simultaneous subordinate financing purchase transactions, the sale price disclosed under § 1026.37(a)(7)(i) is not used under § 1026.37(h)(1) for the calculating cash to close table calculations that include the sale price as a component of the calculation. For example, sale price is generally included in the closing costs financed calculation under § 1026.37(h)(1)(ii) as a component of the estimated total amount of payments to third parties. However, for simultaneous subordinate financing transactions, the estimated total amount of payments to third parties would not include the sale price. The estimated total amount of payments to third parties only includes payments occurring in the simultaneous subordinate financing transaction other than payments toward the sale price.

37(h)(1)(ii) Closing costs financed.

1. *Calculation of amount*. The amount of closing costs financed disclosed under § 1026.37(h)(1)(ii) is determined by subtracting the estimated total amount of payments to third parties not otherwise disclosed under § 1026.37(f) and (g) from the loan amount disclosed under § 1026.37(b)(1). The estimated total amount of payments to third parties includes the sale price disclosed under § 1026.37(a)(7)(i), if applicable, unless otherwise excluded under comment 37(h)(1)-2. Other examples of payments to third parties not otherwise disclosed under

§ 1026.37(f) and (g) include the amount of construction costs for transactions that involve improvements to be made on the property and payoffs of secured or unsecured debt. If the result of the calculation is zero or negative, the amount of $0 is disclosed under § 1026.37(h)(1)(ii). If the result of the calculation is a positive number, that amount is disclosed as a negative number under § 1026.37(h)(1)(ii), but only to the extent that the absolute value of the amount disclosed under § 1026.37(h)(1)(ii) does not exceed the total amount of closing costs disclosed under § 1026.37(g)(6).

2. *Loan amount*. The loan amount disclosed under § 1026.37(b)(1), a component of the closing costs financed calculation, is the total amount the consumer will borrow, as reflected by the face amount of the note.

37(h)(1)(iii) Down payment and other funds from borrower.

1. *Down payment and funds from borrower calculation*. For purposes of § 1026.37(h)(1)(iii)(A)(*1*), the down payment and funds from borrower amount is calculated as the difference between the sale price of the property disclosed under § 1026.37(a)(7)(i) and the sum of the loan amount and any amount of existing loans assumed or taken subject to that will be disclosed on the Closing Disclosure under § 1026.38(j)(2)(iv). The calculation is independent of any loan program or investor requirements.

2. *Funds for borrower*. Section 1026.37(h)(1)(iii)(A)(*2*) requires that, in a purchase transaction as defined in paragraph (a)(9)(i) of this section that is a simultaneous subordinate financing transaction or that involves improvements to be made on the property, or when the sum of the loan amount disclosed under § 1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) exceeds the sale price disclosed under § 1026.37(a)(7)(i), the amount of funds from the consumer is determined in accordance

with § 1026.37(h)(1)(v). Section 1026.37(h)(1)(iii)(B) requires that, for all non-purchase transactions, the amount of estimated funds from the consumer is determined in accordance with § 1026.37(h)(1)(v). Pursuant to § 1026.37(h)(1)(v), the amount to be disclosed under § 1026.37(h)(1)(iii)(A)(*2*) or (B) is determined by subtracting the sum of the loan amount disclosed under § 1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under § 1026.37(h)(1)(ii)) from the total amount of all existing debt being satisfied in the transaction. The total amount of all existing debt being satisfied in the transaction is the sum of the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v), as applicable. When the result of the calculation is positive, that amount is disclosed under § 1026.37(h)(1)(iii) as "Down Payment/Funds from Borrower," and $0 is disclosed under § 1026.37(h)(1)(v) as "Funds for Borrower." When the result of the calculation is negative, that amount is disclosed as a negative number under § 1026.37(h)(1)(v) as "Funds for Borrower," and $0 is disclosed under § 1026.37(h)(1)(iii) as "Down Payment/Funds from Borrower." When the result is $0, $0 is disclosed as "Down Payment/Funds from Borrower" and "Funds for Borrower" under § 1026.37(h)(1)(iii) and (v), respectively.

* * * * *

37(h)(1)(v) Funds for borrower.

1. *No funds for borrower*. When the down payment and other funds from the borrower is determined in accordance with § 1026.37(h)(1)(iii)(A)(*1*), the amount disclosed under § 1026.37(h)(1)(v) as funds for the borrower is $0.

2. *Total amount of existing debt satisfied in the transaction*. The amounts disclosed under § 1026.37(h)(1)(iii)(A)(*2*) or (B), as applicable, and (h)(1)(v) are determined by subtracting the sum of the loan amount disclosed under § 1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed on the Closing Disclosure under § 1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under § 1026.37(h)(1)(ii)) from the total amount of all existing debt being satisfied in the transaction. The total amount of all existing debt being satisfied in the transaction is the sum of the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v), as applicable.

37(h)(1)(vi) Seller credits.

1. *Non-specific seller credits to be disclosed*. Non-specific seller credits, *i.e.*, general payments from the seller to the consumer that do not pay for a particular fee on the disclosures provided under § 1026.19(e)(1), known to the creditor at the time of delivery of the Loan Estimate, are disclosed under § 1026.37(h)(1)(vi). For example, a creditor may learn the amount of seller credits that will be paid in the transaction from information obtained from the consumer, from a review of the purchase and sale contract, or from information obtained from a real estate agent in the transaction.

2. *Seller credits for specific charges*. To the extent known by the creditor at the time of delivery of the Loan Estimate, specific seller credits, *i.e.*, seller credits for specific items disclosed under § 1026.37(f) and (g), may be either disclosed under § 1026.37(h)(1)(vi) or reflected in the amounts disclosed for those specific items under § 1026.37(f) and (g). For example, if the creditor knows at the time of the delivery of the Loan Estimate that the seller has agreed to pay half of a $100 required pest inspection fee, the creditor may either disclose the

required pest inspection fee as $100 under § 1026.37(f) with a $50 seller credit disclosed under § 1026.37(h)(1)(vi) or disclose the required pest inspection fee as $50 under § 1026.37(f), reflecting the specific seller credit in the amount disclosed for the pest inspection fee. If the creditor knows at the time of the delivery of the Loan Estimate that the seller has agreed to pay the entire $100 pest inspection fee, the creditor may either disclose the required pest inspection fee as $100 under § 1026.37(f) with a $100 seller credit disclosed under § 1026.37(h)(1)(vi) or disclose nothing under § 1026.37(f), reflecting that the specific seller credit will cover the entire pest inspection fee.

37(h)(1)(vii) Adjustments and other credits.

1. *Other credits known at the time the Loan Estimate is issued*. Amounts expected to be paid at closing by third parties not otherwise associated with the transaction, such as gifts from family members and not otherwise identified under § 1026.37(h)(1), are included in the amount disclosed under § 1026.37(h)(1)(vii). Amounts expected to be provided in advance of closing by third parties, including family members, not otherwise associated with the transaction are not required to be disclosed under § 1026.37(h)(1)(vii).

* * * * *

4. *Other credits to be disclosed*. Credits other than those from the creditor or seller are disclosed under § 1026.37(h)(1)(vii). Disclosure of other credits is, like other disclosures under § 1026.37, subject to the good faith requirement under § 1026.19(e)(1)(i). See § 1026.19(e)(1)(i) and comments 17(c)(2)(i)-1 and 19(e)(1)(i)-1. The creditor may obtain information regarding items to be disclosed under § 1026.37(h)(1)(vii), for example, from the consumer, from a review of the purchase and sale contract, or from information obtained from a real estate agent in the transaction.

5. *Proceeds from subordinate financing or other source*. Funds that are provided to the consumer from the proceeds of subordinate financing, local or State housing assistance grants, or other similar sources are included in the amount disclosed under § 1026.37(h)(1)(vii) on the first-lien transaction Loan Estimate.

6. *Reduction in amounts for adjustments*. Adjustments that require additional funds from the consumer in a transaction disclosed using the formula under § 1026.37(h)(1)(iii)(A)(*1*) or pursuant to the real estate purchase and sale contract, such as for additional personal property that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v), are only included in the amount disclosed under § 1026.37(h)(1)(vii) if such amounts are not included in the calculation under § 1026.37(h)(1)(iii)(A)(*2*) or (B) or § 1026.37(h)(1)(v) as debt being satisfied in the transaction. Other examples of adjustments for additional funds from the consumer include payoffs of secured or unsecured debt in a purchase transaction disclosed using the formula under § 1026.37(h)(1)(iii)(A)(*1*) or prorations for property taxes and homeowner's association dues. The total amount disclosed under § 1026.37(h)(1)(vii) is a sum of adjustments requiring additional funds from the consumer, calculated as positive amounts, and other credits, such as those provided for in comment 37(h)(1)(vii)-1, calculated as negative amounts.

* * * * *

37(h)(2) Optional alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate financing.

1. *Optional use*. The optional alternative disclosure of the calculating cash to close table in § 1026.37(h)(2) may only be provided by a creditor in a transaction without a seller or for simultaneous subordinate financing. In a purchase transaction, the optional alternative disclosure

may be used for the simultaneous subordinate financing Loan Estimate only if the first-lien Closing Disclosure will record the entirety of the seller's transaction. The use of this alternative table for transactions without a seller or for simultaneous subordinate financing is optional, but creditors may only use this alternative estimated cash to close disclosure in conjunction with the alternative disclosure under § 1026.37(d)(2).

37(h)(2)(iii) Payoffs and payments.

1. *Examples*. Examples of the amounts incorporated in the total amount disclosed under § 1026.37(h)(2)(iii) include, but are not limited to: payoffs of existing liens secured by the property identified under § 1026.37(a)(6) such as existing mortgages, deeds of trust, judgments that have attached to the real property, mechanics' and materialmen's liens, and local, State and Federal tax liens; payments of unsecured outstanding debts of the consumer; construction costs associated with the transaction that the consumer will be obligated to pay in any transaction in which the creditor is otherwise permitted to use the alternative calculating cash to close table; and payments to other third parties for outstanding debts of the consumer, excluding settlement services, as required to be paid as a condition for the extension of credit. Amounts that will be paid with funds provided by the consumer, including partial payments, such as a portion of construction costs, or amounts that will be paid by third parties and will be disclosed on the Closing Disclosure under § 1026.38(t)(5)(vii)(B), are calculated as credits, using positive numbers, in the total amount disclosed under § 1026.37(h)(2)(iii).

2. *Disclosure of subordinate financing*. i. *First-lien Loan Estimate.* On the Loan Estimate for a first-lien transaction disclosed with the optional alternative table pursuant to § 1026.37(h)(2), such as a refinance transaction that also has simultaneous subordinate financing, the proceeds of the simultaneous subordinate financing are included, as a positive number, in the

total amount disclosed under § 1026.37(h)(2)(iii). The total amount disclosed under § 1026.37(h)(2)(iii) is a negative number unless the proceeds from the subordinate financing and any amounts entered as credits as discussed in comment 37(h)(2)(iii)-1 equal or exceed the total amount of other payoffs and payments that are included in the calculation under § 1026.37(h)(2)(iii). If the proceeds from the subordinate financing and any amounts entered as credits as discussed in comment 37(h)(2)(iii)-1 equal or exceed the total amount of other payoffs and payments that are included in the calculation under § 1026.37(h)(2)(iii), the total amount disclosed under § 1026.37(h)(2)(iii) is disclosed as $0 or a positive number.

ii. *Simultaneous subordinate financing Loan Estimate*. On the simultaneous subordinate financing Loan Estimate disclosed with the optional alternative table pursuant to § 1026.37(h)(2), the proceeds of the subordinate financing that will be applied to the first-lien transaction may be included in the payoffs and payments disclosure under § 1026.37(h)(2)(iii).

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37(k) Contact information.

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3. *Contact*. Section 1026.37(k)(2) requires the disclosure of the name and NMLSR ID of the person who is the primary contact for the consumer, labeled "Loan Officer." The loan officer is generally the natural person employed by the creditor or mortgage broker disclosed under § 1026.37(k)(1) who interacts most frequently with the consumer and who has an NMLSR ID or, if none, a license number or other unique identifier to be disclosed under § 1026.37(k)(2), as applicable.

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37(l) Comparisons.

37(l)(1) In five years.

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Paragraph 37(l)(1)(i).

1. *Calculation of total payments in five years*. The amount disclosed under § 1026.37(l)(1)(i) is the sum of principal, interest, mortgage insurance, and loan costs scheduled to be paid through the end of the 60th month after the due date of the first periodic payment. For guidance on how to calculate interest for mortgage loans that are Adjustable Rate products under § 1026.37(a)(10)(i)(A) for purposes of § 1026.37(l)(1)(i), see comment 17(c)(1)-10. In addition, for purposes of § 1026.37(l)(1)(i), the creditor should assume that the consumer makes payments as scheduled and on time. For purposes of § 1026.37(l)(1)(i), mortgage insurance means "mortgage insurance or any functional equivalent" as defined under comment 37(c)(1)(i)(C)-1 and includes prepaid or escrowed mortgage insurance. Loan costs are those costs disclosed under § 1026.37(f).

* * * * *

37(l)(3) Total interest percentage.

1. *General.* When calculating the total interest percentage, the creditor assumes that the consumer will make each payment in full and on time and will not make any additional payments. The creditor includes prepaid interest that the consumer will pay when calculating the total interest percentage. Prepaid interest that is disclosed as a negative number under §§ 1026.37(g)(2) or 1026.38(g)(2) is included as a negative value when calculating the total interest percentage.

* * * * *

37(o) Form of disclosures.

* * * * *

37(o)(4) Rounding.

* * * * *

37(o)(4)(i) Nearest dollar.

Paragraph 37(o)(4)(i)(A).

1. *Rounding of dollar amounts.* Section 1026.37(o)(4)(i)(A) requires that certain dollar amounts be rounded to the nearest whole dollar. For example, under § 1026.37(o)(4)(i)(A), periodic mortgage insurance payments are rounded and disclosed to the nearest dollar, such that a periodic mortgage insurance payment of $164.50 is disclosed under § 1026.37(c)(2)(ii) as $165, but a periodic mortgage insurance payment of $164.49 is disclosed as $164. The per-diem amount disclosed under § 1026.37(g)(2)(iii) and the monthly amounts for the initial escrow payment at closing disclosed pursuant to § 1026.37(g)(3)(i) through (iii) and (v) do not include partial cents. Dollar amounts are rounded or truncated to the nearest whole cent. For example, under § 1026.37(g)(2)(iii), the creditor discloses per-diem interest of $68.1254 as $68.13 or $68.12. See form H-24(B) in appendix H to this part for an illustration of per-diem amounts for homeowner's insurance disclosed pursuant to § 1026.37(g)(3)(i).

* * * * *

37(o)(4)(ii) Percentages.

1. *Decimal places.* Section 1026.37(o)(4)(ii) requires the percentage amounts disclosed rounding exact amounts to three decimal places, but the creditor does not disclose trailing zeros

to the right of the decimal point. For example, a 2.4999 percent annual percentage rate is disclosed as "2.5%" under § 1026.37(o)(4)(ii). Similarly, a 7.005 percent annual percentage rate is disclosed as "7.005%," and a 7.000 percent annual percentage rate is disclosed as "7%."

* * * * *

Section 1026.38—Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure)

* * * * *

4. *Reductions in principal balance*. A principal reduction that occurs immediately or very soon after closing must be disclosed in the summaries of transactions table on the standard Closing Disclosure pursuant to § 1026.38(j)(1)(v) or in the payoffs and payments table on the alternative Closing Disclosure pursuant to § 1026.38(t)(5)(vii)(B). The disclosure of a principal reduction under § 1026.38(j)(1)(v) or (t)(5)(vii)(B) includes the following elements: (1) the amount of the principal reduction; (2) the phrase "principal reduction" or a similar phrase; (3) for a principal reduction disclosure under § 1026.38(t)(5)(vii)(B) only, the name of the payee; (4) if applicable to the transaction, the phrase "Paid Outside of Closing" or "P.O.C." and the name of the party making the payment; and (5) if the principal reduction is used to satisfy the requirements of § 1026.19(f)(2)(v), a statement that the principal reduction is being provided to offset charges that exceed the legal limits, using any language that meets the clear and conspicuous standard under § 1026.38(t)(1)(i). If a creditor is required to disclose the name of the party making the payment or that the principal reduction is being provided to offset charges that exceed the legal limits, and there is insufficient space under the § 1026.38(j)(1)(v) or (t)(5)(vii)(B) disclosure for these elements of the principal reduction disclosure, the creditor may omit these elements from the § 1026.38(j)(1)(v) or (t)(5)(vii)(B) disclosure. If the creditor omits

these elements from the § 1026.38(j)(1)(v) or (t)(5)(vii)(B) disclosure, the creditor must provide a complete principal reduction disclosure under an appropriate heading on an additional page, in accordance with § 1026.38(j) and (t)(5)(ix), as applicable, with a reference to the abbreviated principal reduction disclosure under § 1026.38(j)(1)(v) or (t)(5)(vii)(B).

i. *Principal reduction not paid with closing funds*. A principal reduction is disclosed in the summaries of transactions table under § 1026.38(j)(1)(v) and marked with the phrase "Paid Outside of Closing" or the abbreviation "P.O.C." pursuant to § 1026.38(j)(4)(i), or in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) marked with the phrase "Paid Outside of Closing" or the abbreviation "P.O.C.," if it is not paid from closing funds. For a principal reduction disclosed under § 1026.38(j)(1)(v) that is not paid from closing funds, the amount of the principal reduction is not included in computing the summaries of transactions totals under § 1026.38(j) or the cash to close disclosures under § 1026.38(i). For a principal reduction disclosed under § 1026.38(t)(5)(vii)(B) that is not paid from closing funds, the amount of the principal reduction is not included in computing the total payoffs and payments amount disclosed under § 1026.38(t)(5)(vii)(B) or the cash to close amount disclosed under § 1026.38(e)(5)(ii). For example, a creditor providing a $500 principal reduction to satisfy the refund requirements of § 1026.19(f)(2)(v) discloses the principal reduction under § 1026.38(j)(1)(v) by providing in Section K of the summaries of transactions table a statement such as "$500.00 Principal Reduction for exceeding legal limits P.O.C. Lender," and not including the amount of the principal reduction in the summaries of transactions totals under § 1026.38(j) or the calculating cash to close disclosures under § 1026.38(i). Alternatively, if there is insufficient space under § 1026.38(j)(1)(v) for a creditor to disclose the name of the party making the payment or a statement that the principal reduction is being provided to offset

charges that exceed the legal limits, a creditor may disclose a statement such as "$500.00 Principal Reduction P.O.C." under § 1026.38(j)(1)(v) and a statement on an additional page such as "$500.00 Principal Reduction for exceeding legal limits P.O.C. Lender. See Section K on page 3."

ii. *Principal reduction paid with closing funds*. A principal reduction is disclosed in the summaries of transactions table under § 1026.38(j)(1)(v) or in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) without the phrase "Paid Outside of Closing" or the abbreviation "P.O.C." if it is paid from closing funds. The amount of a principal reduction that is paid with closing funds is included in the applicable calculations required under § 1026.38. For example, in a refinance transaction using the alternative tables on the Closing Disclosure, a creditor discloses a $1,000 principal reduction to reduce the cash provided to the consumer by providing in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) a statement such as "Principal Reduction to Consumer" under the column heading "TO" and "$1,000.00" under the column heading "AMOUNT," and by including such amount in the total payoffs and payments amount under § 1026.38(t)(5)(vii)(B) and in the cash to close amount under § 1026.38(e)(5)(ii). In this example, the creditor must disclose the following elements under § 1026.38(t)(5)(vii)(B): the amount of the principal reduction, the phrase "principal reduction" or a similar phrase, and the name of the payee. The creditor should not include in the disclosure the phrase "Paid Outside of Closing" or "P.O.C." and the name of the party making the payment, or a statement that the principal reduction is being provided to offset charges that exceed the legal limits, because those principal reduction disclosure elements are not applicable to the transaction in this particular example. The creditor may not use an addendum for the principal reduction disclosure in this example.

38(a) General information.

38(a)(3) Closing information.

* * * * *

38(a)(3)(iii) Disbursement date.

1. *Simultaneous subordinate financing disbursement date*. The disbursement date on the simultaneous subordinate financing Closing Disclosure is the date some or all of the subordinate financing loan amount disclosed under § 1026.38(b) is expected to be paid to the consumer or a third party other than a settlement agent.

* * * * *

38(a)(3)(vii) Sale price.

1. *No seller.* In transactions where there is no seller, such as in a refinancing, § 1026.38(a)(3)(vii)(B) requires the creditor to disclose the appraised value of the property. To comply with this requirement, the creditor discloses the value determined by the appraisal or valuation used to determine approval of the credit transaction. If the creditor has not obtained an appraisal, the creditor may disclose the estimated value of the property. Where an estimate is disclosed, rather than an appraisal, the label for the disclosure is changed to ‘‘Estimated Prop. Value.” The creditor may use the estimate provided by the consumer at application but, if it has performed its own estimate of the property value for purposes of approving the credit transaction by the time the disclosure is provided to the consumer, the creditor must disclose the estimate it used for purposes of approving the credit transaction. For transactions involving construction where there is no seller, the creditor must disclose the value of the property that is used to determine the approval of the credit transaction, including improvements to be made on the property if those improvements are used in determining the approval of the credit transaction.

* * * * *

38(a)(4) Transaction information.

* * * * *

2. *No seller transactions or simultaneous subordinate financing transactions*. In transactions where there is no seller, such as in a refinancing or home equity loan, or for simultaneous subordinate financing purchase transactions if the first-lien Closing Disclosure will record the entirety of the seller's transaction, the disclosure under § 1026.38(a)(4)(ii) may be left blank. *See also* § 1026.38(t)(5)(vii)(A).

* * * * *

4. *Consumers*. Section 1026.38(a)(4)(i) requires disclosure of the consumer's name and mailing address, labeled "Borrower." For purposes of § 1026.38(a)(4)(i), the term "consumer" is limited to persons to whom the credit is offered or extended. For guidance on how to disclose multiple consumers, see comment 38(a)(4)-1.

* * * * *

38(d) Costs at closing.

38(d)(2) Alternative table for transactions without a seller or for simultaneous subordinate financing.

1. *Required use*. The disclosure of the alternative cash to close table in § 1026.38(d)(2) may only be provided by a creditor in a transaction without a seller or for a simultaneous subordinate financing transaction. In a purchase transaction, the alternative disclosure may be used for the simultaneous subordinate financing Closing Disclosure only if the first-lien Closing Disclosure records the entirety of the seller's transaction. The use of this alternative table for transactions without a seller or for simultaneous subordinate financing transactions is required if

the Loan Estimate provided to the consumer disclosed the optional alternative table under § 1026.37(d)(2) and must be used in conjunction with the use of the alternative calculating cash to close disclosure under § 1026.38(e). See comments 38(j)-3 and 38(k)(2)(vii)-1 for disclosure requirements applicable to the first-lien transaction when the alternative disclosures are used for a simultaneous subordinate financing transaction and a seller contributes to the costs of the subordinate financing. See also comments 38(t)(5)(vii)(B)-1 and -2 for the requirement to disclose the seller's contributions, if any, toward the subordinate financing in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure.

* * * * *

38(e) Alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate financing.

1. *Required use*. The disclosure of the table in § 1026.38(e) may only be provided by a creditor in a transaction without a seller or for a simultaneous subordinate financing transaction. In a purchase transaction, the alternative disclosure may be used for the simultaneous subordinate financing Closing Disclosure only if the first-lien Closing Disclosure records the entirety of the seller's transaction. The use of this alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate financing is required for transactions in which the Loan Estimate provided to the consumer disclosed the optional alternative table under § 1026.37(h)(2), and must be used in conjunction with the alternative disclosure under § 1026.38(d)(2).

* * * * *

3. *Statements of differences.* The dollar amounts disclosed under § 1026.38 generally are shown to two decimal places unless otherwise required. *See* comment 38(t)(4)-1. Any amount

in the “Final” column of the alternative calculating cash to close table under § 1026.38(e) is shown to two decimal places unless otherwise required. Pursuant to § 1026.38(t)(4)(i)(C), however, any amount in the “Loan Estimate” column of the alternative calculating cash to close table under § 1026.38(e) is rounded to the nearest dollar amount to match the corresponding estimated amount disclosed on the Loan Estimate’s calculating cash to close table under § 1026.37(h). For purposes of § 1026.38(e)(1)(iii), (2)(iii), and (4)(iii), each statement of a change between the amounts disclosed on the Loan Estimate and the Closing Disclosure is based on the actual, non-rounded estimate that would have been disclosed on the Loan Estimate under § 1026.37(h) if it had been shown to two decimal places rather than a whole dollar amount. For example, if the amounts in the “Loan Estimate” column of the total closing costs row disclosed under § 1026.38(e)(2)(i) is $12,500, but the non-rounded estimate of total closing costs is $12,500.35, and the “Final” column of the total closing costs row disclosed under § 1026.38(e)(2)(ii) is $12,500.35, then, even though the table would appear to show a $0.35 increase in total closing costs, no statement of such increase is given under § 1026.38(e)(2)(iii).

* * * * *

6. *Estimated amounts*. The amounts disclosed on the alternative calculating cash to close table under the subheading “Loan Estimate” under § 1026.38(e)(1)(i), (2)(i), (4)(i), and (5)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer under § 1026.19(e).

* * * * *

38(e)(2) Total closing costs.

* * * * *

Paragraph 38(e)(2)(iii)(A).

* * * * *

2. *Disclosure of excess amounts above limitations on increases in closing costs*.

i. Because certain closing costs, individually, are generally subject to the limitations on increases in closing costs under § 1026.19(e)(3)(i) (*e.g.*, fees paid to the creditor, transfer taxes, fees paid to an affiliate of the creditor), while other closing costs are collectively subject to the limitations on increases in closing costs under § 1026.19(e)(3)(ii) (*e.g.*, recording fees, fees paid to an unaffiliated third party identified by the creditor if the creditor permitted the consumer to shop for the service provider), § 1026.38(e)(2)(iii)(A) requires the creditor or closing agent to calculate subtotals for each type of excess amount, and then add such subtotals together to yield the dollar amount to be disclosed in the table. See commentary to § 1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under § 1026.19(e)(3).

ii. Under § 1026.38(e)(2)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that the itemized, estimated closing costs disclosed on the Loan Estimate will not result in charges to the consumer if the service is not actually provided at or before consummation. For example, if the Loan Estimate included under "Services You Cannot Shop For" a $30 charge for a "title courier fee," but the title company elects to hand-deliver the title documents package to the creditor at no charge, the $30 fee is not factored into the calculation of the "Total Closing Costs" that are subject to the limitations on increases in closing costs. However, if the title courier fee was assessed, but at only $15, the charge is factored into the calculation because the third party service was actually provided,

albeit at a lower amount than estimated. For an example, see form H-25 of appendix H to this part.

iii. Under § 1026.38(e)(2)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that certain itemized charges listed on the Loan Estimate under the subheading "Services You Can Shop For" may be subject to different limitations depending on the circumstances. Although § 1026.19(e)(3)(iii) provides exceptions to the general rule, such a charge would generally be subject to the limitations under § 1026.19(e)(3)(i) if the consumer decided to use a provider affiliated with the creditor. However, the same charge would instead be subject to the limitations under § 1026.19(e)(3)(ii) if the consumer selected a third party service provider unaffiliated with but identified by the creditor, and the creditor permitted the consumer to shop for the service provider. See commentary to § 1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under § 1026.19(e)(3).

3. *Statements regarding excess amount and any credit to the consumer*. Section 1026.38(e)(2)(iii)(A) requires a statement that an increase in closing costs exceeds legal limits by the dollar amount of the excess and a statement directing the consumer to the disclosure of lender credits under § 1026.38(h)(3) or a principal reduction under § 1026.38(t)(5)(vii)(B), if provided under § 1026.19(f)(2)(v). See form H-25(F) in appendix H to this part for examples of such statements under § 1026.38(h)(3). *See also* comments 38-4 and 38(h)(3)-2.

38(e)(3) Closing costs paid before closing.

* * * * *

Paragraph 38(e)(3)(iii)(B).

1. *Equal amount*. Under § 1026.38(e)(3)(iii)(B), the creditor gives a statement that the

"Final" amount disclosed under § 1026.38(e)(3)(ii) is equal to the "Loan Estimate" amount disclosed under § 1026.38(e)(3)(i), only if the "Final" amount is $0, because the "Loan Estimate" amount is always disclosed as $0 under § 1026.38(e)(3)(i). *See* comment 38(e)(3)(i)-1.

38(f) Closing cost details; loan costs.

* * * * *

2. *Construction loan inspection and handling fees*. Construction loan inspection and handling fees are loan costs associated with the transaction for purposes of § 1026.38(f). For information on how to disclose inspection and handling fees for the staged disbursement of construction loan proceeds if the amount or number of such fees or when they will be collected is not known at or before consummation, see comments 37(f)-3, 37(f)(6)-3, and app. D-7.vii. See § 1026.17(e) and its commentary concerning the effect of subsequent events that cause inaccuracies in disclosures.

* * * * *

38(g) Closing costs details; other costs.

38(g)(1) Taxes and other government fees.

* * * * *

3. *Recording fees*. i. *Fees for recording deeds and security instruments*. Section 1026.38(g)(1)(i)(A) requires, on the first line under the subheading "Taxes and Other Government Fees" and before the columns described in § 1026.38(g), disclosure of the total fees expected to be paid to State and local governments for recording deeds and, separately, the total fees expected to be paid to State and local governments for recording security instruments. On a

line labeled “Recording Fees,” form H-25 of appendix H to this part illustrates such disclosures with the additional labels “Deed” and “Mortgage,” respectively.

ii. *Total of all recording fees.* Section 1026.38(g)(1)(i)(B) requires, on the first line under the subheading “Taxes and Other Government Fees” and in the applicable column described in § 1026.38(g), disclosure of the total amounts paid for recording fees, including but not limited to the amounts subject to § 1026.38(g)(1)(i)(A). The total amount disclosed under § 1026.38(g)(1)(i)(B) also includes recording fees expected to be paid to State and local governments for recording any other instrument or document to preserve marketable title or to perfect the creditor’s security interest in the property. See comments 37(g)(1)-1, -2, and -3 for discussions of the difference between transfer taxes and recording fees.

38(g)(2) Prepaids.

* * * * *

3. *No prepaid interest.* If interest is not collected for any period between closing and the date from which interest will be collected with the first monthly payment, then $0.00 is disclosed under § 1026.38(g)(2).

* * * * *

38(i) Calculating cash to close.

* * * * *

2. *Statements of differences*. The dollar amounts disclosed under § 1026.38 generally are shown to two decimal places unless otherwise required. *See* comment 38(t)(4)-1. Any amount in the “Final” column of the calculating cash to close table under § 1026.38(i) is shown to two decimal places unless otherwise required. Under § 1026.38(t)(4)(i)(C), however, any amount in

the “Loan Estimate” column of the calculating cash to close table under § 1026.38(i) is rounded to the nearest dollar amount to match the corresponding estimated amount disclosed on the Loan Estimate’s calculating cash to close table under § 1026.37(h). For purposes of § 1026.38(i)(1)(iii), (3)(iii), (4)(iii), (5)(iii), (6)(iii), (7)(iii), and (8)(iii), each statement of a change between the amounts disclosed on the Loan Estimate and the Closing Disclosure is based on the actual, non-rounded estimate that would have been disclosed on the Loan Estimate under § 1026.37(h) if it had been shown to two decimal places rather than a whole dollar amount. For example, if the amount in the “Loan Estimate” column of the total closing costs row disclosed under § 1026.38(i)(1)(i) is $12,500, but the non-rounded estimate of total closing costs is $12,500.35, and the amount in the “Final” column of the total closing costs row disclosed under § 1026.38(i)(1)(ii) is $12,500.35, then, even though the table would appear to show a $0.35 increase in total closing costs, no statement of such increase is given under § 1026.38(i)(1)(iii).

3. *Statements that the consumer should see details*. The provisions of § 1026.38(i)(4)(iii)(A), (5)(iii)(A), (7)(iii)(A), and (8)(iii)(A) each require a statement that the consumer should see certain details of the closing costs disclosed under § 1026.38(j). Form H-25 of appendix H to this part contains some examples of these statements. For example, § 1026.38(i)(5)(iii)(A) requires a statement that the consumer should see the details disclosed under § 1026.38(j)(2)(ii). The following statement, which is similar to that shown on form H-25(B) of appendix H to this part for § 1026.38(i)(7)(iii)(A), “See Deposit in Section L,” in which the words “Section L” are in boldface font, complies with this provision. In addition, for example, the statement “See details in Sections K and L,” in which the words “Sections K and L” are in boldface font, complies with the requirement under § 1026.38(i)(8)(iii)(A). See form H-25(B) of appendix H to this part for an example of the statement required by

§ 1026.38(i)(8)(iii)(A). See also comment 38(i)(7)(iii)(A)-1 for additional examples that comply with the requirements under § 1026.38(i)(7)(iii)(A).

* * * * *

5. *Estimated amounts*. The amounts disclosed in the "Loan Estimate" column of the calculating cash to close table under § 1026.38(i)(1)(i), (3)(i), (4)(i), (5)(i), (6)(i), (7)(i), (8)(i), and (9)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer.

38(i)(1) Total closing costs.

Paragraph 38(i)(1)(iii)(A).

* * * * *

2. *Disclosure of excess amounts above limitations on increases in closing costs*.

i. Because certain closing costs, individually, are generally subject to the limitations on increases in closing costs under § 1026.19(e)(3)(i) (*e.g.*, fees paid to the creditor, transfer taxes, fees paid to an affiliate of the creditor), while other closing costs are collectively subject to the limitations on increases in closing costs under § 1026.19(e)(3)(ii) (*e.g.*, recording fees, fees paid to an unaffiliated third party identified by the creditor if the creditor permitted the consumer to shop for the service provider), § 1026.38(i)(1)(iii)(A) requires the creditor or closing agent to calculate subtotals for each type of excess amount, and then add such subtotals together to yield the dollar amount to be disclosed in the table. See commentary to § 1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under § 1026.19(e)(3).

ii. Under § 1026.38(i)(1)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that the itemized, estimated closing costs disclosed on the Loan Estimate will not result in charges to the consumer if the service is not

actually provided at or before consummation. For example, if the Loan Estimate included under "Services You Cannot Shop For" a $30 charge for a "title courier fee," but the title company elects to hand-deliver the title documents package to the creditor at no charge, the $30 fee is not factored into the calculation of the "Total Closing Costs" that are subject to the limitations on increases in closing costs. However, if the title courier fee was assessed, but at only $15, the charge is factored into the calculation because the third-party service was actually provided, albeit at a lower amount than estimated.

iii. Under § 1026.38(i)(1)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that certain itemized charges listed on the Loan Estimate under the subheading "Services You Can Shop For" may be subject to different limitations depending on the circumstances. Although § 1026.19(e)(3)(iii) provides exceptions to the general rule, such a charge would generally be subject to the limitations under § 1026.19(e)(3)(i) if the consumer decided to use a provider affiliated with the creditor. However, the same charge would instead be subject to the limitations under § 1026.19(e)(3)(ii) if the consumer selected a third-party service provider unaffiliated with but identified by the creditor, and the creditor permitted the consumer to shop for the service provider. See commentary to § 1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under § 1026.19(e)(3).

3. *Statements regarding excess amount and any credit to the consumer*. Section 1026.38(i)(1)(iii)(A)(*3*) requires statements that an increase in closing costs exceeds legal limits by the dollar amount of the excess and a statement directing the consumer to the disclosure of lender credits under § 1026.38(h)(3), or a principal reduction under § 1026.38(j)(1)(v), if either is provided under § 1026.19(f)(2)(v). See form H-25(F) of appendix H to this part for examples of

such statements under § 1026.38(h)(3). *See also* comments 38-4 and 38(h)(3)-2.

* * * * *

38(i)(3) Closing costs financed.

1. *Calculation of amount*. i. *Generally*. The amount of closing costs financed disclosed under § 1026.38(i)(3) is determined by subtracting the total amount of payments to third parties not otherwise disclosed under § 1026.38(f) and (g) from the loan amount disclosed under § 1026.38(b). The total amount of payments to third parties includes the sale price of the property disclosed under § 1026.38(j)(1)(ii). Other examples of payments to third parties not otherwise disclosed under § 1026.38(f) and (g) include the amount of construction costs for transactions that involve improvements to be made on the property, and payoffs of secured or unsecured debt. If the result of the calculation is zero or negative, the amount of $0 is disclosed under § 1026.38(i)(3). If the result of the calculation is positive, that amount is disclosed as a negative number under § 1026.38(i)(3), but only to the extent that the absolute value of the amount disclosed under § 1026.38(i)(3) does not exceed the total amount of closing costs disclosed under § 1026.38(h)(1).

ii. *Simultaneous subordinate financing*. For simultaneous subordinate financing transactions, no sale price will be disclosed under § 1026.38(j)(1)(ii), and therefore no sale price will be included in the closing costs financed calculation as a payment to third parties. The total amount of payments to third parties only includes payments occurring in the simultaneous subordinate financing transaction other than payments toward the sale price.

2. *Loan amount*. The loan amount disclosed under § 1026.38(b), a component of the closing costs financed calculation, is the total amount the consumer will borrow, as reflected by the face amount of the note.

38(i)(4) Down payment/funds from borrower.

Paragraph 38(i)(4)(ii)(A).

1. *Down payment and funds from borrower calculation*. Under § 1026.38(i)(4)(ii)(A)(*1*), the down payment and funds from borrower amount is calculated as the difference between the sale price of the property disclosed under § 1026.38(a)(3)(vii)(A) and the sum of the loan amount disclosed under § 1026.38(b) and any amount of existing loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv), except as required by § 1026.38(i)(4)(ii)(A)(*2*). The calculation is independent of any loan program or investor requirements. The "Final" amount disclosed for "Down Payment/Funds from Borrower" reflects any change, following delivery of the Loan Estimate, in the amount of down payment and other funds required of the consumer. This change might result, for example, from an increase in the purchase price of the property.

2. *Funds for borrower*. Section 1026.38(i)(4)(ii)(A)(*2*) requires that, in a purchase transaction as defined in § 1026.37(a)(9)(i) that is a simultaneous subordinate financing transaction or that involves improvements to be made on the property, or when the sum of the loan amount disclosed under § 1026.38(b) and any amount of existing loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv) exceeds the sale price disclosed under § 1026.38(a)(3)(vii)(A), the amount of funds from the consumer is determined in accordance with § 1026.38(i)(6)(iv). Pursuant to § 1026.38(i)(6)(iv), the "Final" amount of "Down Payment/Funds from Borrower" to be disclosed under § 1026.38(i)(4)(ii)(A)(*2*) is determined by subtracting the sum of the loan amount and any amount of existing loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under § 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the transaction disclosed under § 1026.38(j)(1)(ii), (iii), and (v). The amount of "Down

Payment/Funds from Borrower" under the subheading "Final" is disclosed either as a positive number or $0, depending on the result of the calculation. When the result of the calculation is positive, that amount is disclosed under § 1026.38(i)(4)(ii)(A)(*2*) as "Down Payment/Funds from Borrower," and $0 is disclosed under § 1026.38(i)(6)(ii) as "Funds for Borrower." When the result of the calculation is negative, that amount is disclosed under § 1026.38(i)(6)(ii) as "Funds for Borrower," and $0 is disclosed under § 1026.38(i)(4)(ii)(A)(*2*) as "Down Payment/Funds from Borrower." When the result is $0, $0 is disclosed as "Down Payment/Funds from Borrower" and "Funds for Borrower" under § 1026.38(i)(4)(ii)(A)(*2*) and (6)(ii), respectively. An increase in the amount of "Down Payment/Funds from Borrower" under the subheading "Final" relative to the corresponding amount under the subheading "Loan Estimate" might result, for example, from a decrease in the loan amount or an increase in the amount of existing debt being satisfied in the transaction. For additional discussion of the determination of the "Down Payment/Funds from Borrower" amount, see comment 38(i)(6)(ii)-1.

Paragraph 38(i)(4)(ii)(B).

1. *Funds for borrower*. Section 1026.38(i)(4)(ii)(B) requires that, in all transactions not subject to § 1026.38(i)(4)(ii)(A), the "Final" amount disclosed for "Down Payment/Funds from Borrower" is the amount determined in accordance with § 1026.38(i)(6)(iv). Pursuant to § 1026.38(i)(6)(iv), the "Final" amount of "Down Payment/Funds from Borrower" to be disclosed under § 1026.38(i)(4)(ii)(B) is determined by subtracting the sum of the loan amount disclosed under § 1026.38(b) and any amount of existing loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under § 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the transaction disclosed under § 1026.38(j)(1)(ii), (iii), and (v). The "Final" amount of "Down Payment/Funds

from Borrower" is disclosed either as a positive number or $0, depending on the result of the calculation. When the result of the calculation is positive, that amount is disclosed under § 1026.38(i)(4)(ii)(B) as "Down Payment/Funds from Borrower," and $0 is disclosed under § 1026.38(i)(6)(ii) as "Funds for Borrower." When the result of the calculation is negative, that amount is disclosed under § 1026.38(i)(6)(ii) as "Funds for Borrower," and $0 is disclosed under § 1026.38(i)(4)(ii)(B) as "Down Payment/Funds from Borrower." When the result is $0, $0 is disclosed as "Down Payment/Funds from Borrower" and "Funds for Borrower" under § 1026.38(i)(4)(ii)(B) and (6)(ii), respectively. An increase in the "Final" amount of "Down Payment/Funds from Borrower" relative to the corresponding "Loan Estimate" amount might result, for example, from a decrease in the loan amount or an increase in the amount of existing debt being satisfied in the transaction. For additional discussion of the determination of the "Down Payment/Funds from Borrower" amount, see comment 38(i)(6)(ii)-1.

Paragraph 38(i)(4)(iii)(A).

1. *Statement of differences*. Section 1026.38(i)(4)(iii)(A) requires, as applicable, a statement that the consumer has increased or decreased this payment, along with a statement that the consumer should see the details disclosed under § 1026.38(j)(1) or (j)(2), as applicable. The applicable disclosure to be referenced corresponds to the label on the Closing Disclosure under which the information accounting for the increase in the "Down Payment/Funds from Borrower" amount is disclosed. For example, in a transaction that is a purchase as defined in § 1026.37(a)(9)(i), if the purchase price of the property has increased and therefore caused the "Down Payment/Funds from Borrower" amount to increase, the statement, "You increased this payment. See details in Section K," with the words "increased" and "Section K" in boldface, complies with this requirement. In a purchase or refinancing transaction, in the event the amount

of the credit extended by the creditor has decreased and therefore caused the "Down Payment/Funds from Borrower" amount to increase, the statement can read, for example, "You increased this payment. See details in Section L," with the same in boldface.

38(i)(5) Deposit.

1. *When no deposit*. Section 1026.38(i)(5) requires the disclosure in the calculating cash to close table of the deposit required to be disclosed under § 1026.37(h)(1)(iv) and under § 1026.38(j)(2)(ii), under the subheadings "Loan Estimate" and "Final," respectively. Under § 1026.37(h)(1)(iv), for all transactions other than a purchase transaction as defined in § 1026.37(a)(9)(i), the amount required to be disclosed is $0. In a purchase transaction in which no deposit is paid in connection with the transaction, under §§ 1026.37(h)(1)(iv) and 1026.38(i)(5)(i) and (ii) the amount required to be disclosed is $0.

38(i)(6) Funds for borrower.

Paragraph 38(i)(6)(ii).

1. *Final funds for borrower*. Section 1026.38(i)(6)(ii) provides that the "Final" amount for "Funds for Borrower" is determined in accordance with § 1026.38(i)(6)(iv). Under § 1026.38(i)(6)(iv), the "Final" amount of "Funds for Borrower" to be disclosed under § 1026.38(i)(6)(ii) is determined by subtracting the sum of the loan amount disclosed under § 1026.38(b) and any amount of existing loans assumed or taken subject to that is disclosed under § 1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under § 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the transaction disclosed under § 1026.38(j)(1)(ii), (iii), and (v). The amount is disclosed under § 1026.38(i)(6)(ii) either as a negative number or as $0, depending on the result of the calculation. The "Final" amount of "Funds for Borrower" disclosed under § 1026.38(i)(6)(ii) is

an amount to be disbursed to the consumer or a designee of the consumer at consummation, if any.

2. *No funds for borrower*. When the down payment and funds from the borrower is determined in accordance with § 1026.38(i)(4)(ii)(A)(*1*), the amount disclosed under § 1026.38(i)(6)(ii) as "Funds for Borrower" is $0.

38(i)(7) Seller credits.

* * * * *

Paragraph 38(i)(7)(iii)(A).

1. *Statement that the consumer should see details*. Under § 1026.38(i)(7)(iii)(A), if the amount disclosed under § 1026.38(i)(7)(ii) in the "Final" column is not equal to the amount disclosed under § 1026.38(i)(7)(i) in the "Loan Estimate" column (unless the difference is due to rounding), the creditor must disclose a statement that the consumer should see the details disclosed either: (1) under § 1026.38(j)(2)(v) in the summaries of transactions table and the seller-paid column of the closing cost details table under § 1026.38(f) or (g); or (2) if the difference is attributable only to general seller credits disclosed under § 1026.38(j)(2)(v), or only to specific seller credits disclosed in the seller-paid column of the closing cost details table under § 1026.38(f) or (g), under only the applicable provision. If, for example, a decrease in the seller credits disclosed under § 1026.38(i)(7)(ii) is attributable only to a decrease in general (*i.e.*, lump sum) seller credits, then a statement is given under the subheading "Did this change?" in the calculating cash to close table that the consumer should see the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table and the seller-paid column of § 1026.38(f) or (g), or that the consumer should see the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table. Form H-25(B) in appendix H to this part demonstrates

this disclosure where the decrease in seller credits is attributable only to a decrease in general seller credits and the creditor choses only to reference the applicable provision; form H-25(B)'s statement "See Seller Credits in Section L," in which the words "Section L" are in boldface font, complies with this requirement. Where the decrease in the seller credits disclosed under § 1026.38(i)(7)(ii) is attributable to specific and general seller credits, or the creditor does not elect to reference only the applicable provision, then a statement is given under the subheading "Did this change?" that the consumer should see both the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table and the seller-paid column of the closing cost details table under § 1026.38(f) or (g). For example, the statement "See Seller-Paid column on page 2 and Seller Credits in Section L," in which the words "Seller-Paid" and "Section L" are in boldface font, complies with this requirement.

38(i)(8) Adjustments and other credits.

Paragraph 38(i)(8)(ii).

1. *Adjustments and other credits*. Under § 1026.38(i)(8)(ii), the "Final" amount for "Adjustments and Other Credits" would include, for example, prorations of taxes or homeowner's association fees, utilities used but not paid for by the seller, rent collected in advance by the seller from a tenant for a period extending beyond the consummation, and interest on loan assumptions. This category also includes generalized credits toward closing costs given by parties other than the seller. For additional guidance regarding adjustments and other credits, see commentary to §§ 1026.37(h)(1)(vii) and 1026.38(j)(2)(vi) and (xi). If the calculation required by § 1026.38(i)(8)(ii) yields a negative number, the creditor or closing agent discloses the amount as a negative number.

* * * * *

38(j) Summary of borrower's transaction.

* * * * *

3. *Identical amounts*. The amounts disclosed under the following provisions of § 1026.38(j) are the same as the amounts disclosed under the corresponding provisions of § 1026.38(k): § 1026.38(j)(1)(ii) and (k)(1)(ii); § 1026.38(j)(1)(iii) and (k)(1)(iii); if the amount disclosed under § 1026.38(j)(1)(v) is attributable to contractual adjustments between the consumer and seller, § 1026.38(j)(1)(v) and (k)(1)(iv); § 1026.38(j)(1)(vii) and (k)(1)(vi); § 1026.38(j)(1)(viii) and (k)(1)(vii); § 1026.38(j)(1)(ix) and (k)(1)(viii); § 1026.38(j)(1)(x) and (k)(1)(ix); § 1026.38(j)(2)(iv) and (k)(2)(iv); unless seller contributions toward simultaneous subordinate financing are disclosed under § 1026.38(t)(5)(vii)(B) on the simultaneous subordinate financing Closing Disclosure and § 1026.38(k)(2)(vii) on the first-lien Closing Disclosure, § 1026.38(j)(2)(v) and (k)(2)(vii); § 1026.38(j)(2)(viii) and (k)(2)(x); § 1026.38(j)(2)(ix) and (k)(2)(xi); § 1026.38(j)(2)(x) and (k)(2)(xii); and § 1026.38(j)(2)(xi) and (k)(2)(xiii).

38(j)(1) Itemization of amounts due from borrower.

Paragraph 38(j)(1)(ii).

1. *Contract sales price and personal property*. Section 1026.38(j)(1)(ii) requires disclosure of the contract sales price of the property being sold, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items. On the simultaneous subordinate financing Closing Disclosure, no contract sales price is disclosed under § 1026.38(j)(1)(ii). Personal property is defined by State law, but could include such items as carpets, drapes, and appliances. Manufactured homes are not considered personal property under § 1026.38(j)(1)(ii).

Paragraph 38(j)(1)(v).

1. *Contractual adjustments*. Section 1026.38(j)(1)(v) requires disclosure of amounts not otherwise disclosed under § 1026.38(j) that are owed to the seller but payable to the consumer after the real estate closing. For example, the following items must be disclosed and listed under the heading "Adjustments" under § 1026.38(j), to the extent applicable:

i. The balance in the seller's reserve account held in connection with an existing loan, if assigned to the consumer in a loan assumption transaction;

ii. Any rent that the consumer will collect after the real estate closing for a period of time prior to the real estate closing; and

iii. The treatment of any tenant security deposit.

2. *Other consumer charges*. The amounts disclosed under § 1026.38(j)(1)(v) which are for charges owed by the consumer at the real estate closing not otherwise disclosed under § 1026.38(f), (g), and (j) will not have a corresponding credit in the summary of the seller's transaction under § 1026.38(k)(1)(iv). For example, the amounts paid to any holders of existing liens on the property in a refinance transaction, construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of other secured or unsecured debt, any outstanding real estate property taxes, and principal reductions are disclosed under § 1026.38(j)(1)(v) without a corresponding credit in the summary of the seller's transaction under § 1026.38(k)(1)(iv). See comment 38-4 for an explanation of how to disclose a principal reduction under § 1026.38(j)(1)(v).

3. *Simultaneous subordinate financing Closing Disclosure*. On the simultaneous subordinate financing Closing Disclosure, the proceeds of the subordinate financing applied to the first-lien transaction may be included in the summaries of transactions table under

§ 1026.38(j)(1)(v). See also comments 37(h)(1)(v)-2 and 37(h)(1)(vii)-6 for an explanation of how to disclose on the Loan Estimate amounts that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v).

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38(j)(2) Itemization of amounts already paid by or on behalf of borrower.

* * * * *

Paragraph 38(j)(2)(vi).

* * * * *

2. *Subordinate financing proceeds on first-lien Closing Disclosure*. Any financing arrangements or other new loans not otherwise disclosed under § 1026.38(j)(2)(iii) or (iv) must be disclosed under § 1026.38(j)(2)(vi) on the first-lien Closing Disclosure. For example, if the consumer is using a second mortgage loan to finance part of the purchase price, whether from the same creditor, another creditor, or the seller, the principal amount of the second loan must be disclosed with a brief explanation on the first-lien Closing Disclosure. In this example, the principal amount of the subordinate financing is disclosed on the summaries of transactions table for the borrower's transaction either on line 04 under the subheading "L. Paid Already by or on Behalf of Borrower at Closing," or under the subheading "Other Credits." If the net proceeds of the subordinate financing are less than the principal amount of the subordinate financing, the net proceeds must also be listed, and may be listed on the same line as the principal amount of the subordinate financing on the first-lien Closing Disclosure. For an example, see form H-25(C) of appendix H to this part.

* * * * *

5. *Gift funds*. A credit must be disclosed only for any money or other payments made at closing by third parties, including family members, not otherwise associated with the transaction, along with a description of the nature of the funds provided under § 1026.38(j)(2)(vi). Amounts provided in advance of the real estate closing to consumers by third parties, including family members, not otherwise associated with the transaction, are not required to be disclosed under § 1026.38(j)(2)(vi).

6. *Adjustments*. Section 1026.38(j)(2)(vi) requires the disclosure of any additional amounts not already disclosed under § 1026.38(f), (g), (h), and (j)(2), that are owed to the consumer but payable to the seller before the real estate closing. The disclosures made under § 1026.38(j)(2)(vi) must also include a description for each disclosed amount. For example, rent paid to the seller from a tenant before the real estate closing for a period extending beyond the real estate closing is disclosed by identifying the amount as rent from a tenant under the heading "Adjustments." See also § 1026.38(k)(2)(viii), which requires disclosure of a description and amount of any and all other obligations required to be paid by the seller at the real estate closing.

Paragraph 38(j)(2)(xi).

1. *Examples.* Section 1026.38(j)(2)(xi) requires the disclosure of any amounts the consumer is expected to pay after the real estate closing that are attributable in part to a period of time prior to the real estate closing. Examples of items that would be disclosed under § 1026.38(j)(2)(xi) include:

i. Utilities used but not paid for by the seller; and

ii. Interest on loan assumptions.

* * * * *

38(j)(4) Items paid outside of closing funds.

Paragraph 38(j)(4)(i).

1. *Charges not paid with closing funds*. Section 1026.38(j)(4)(i) requires that any charges not paid from closing funds but that otherwise are disclosed under § 1026.38(j) be marked as "paid outside of closing" or "P.O.C." The disclosure must identify the party making the payment, such as the consumer, seller, loan originator, real estate agent, or any other person. For an example of a disclosure of a charge not made from closing funds, see form H-25(D) of appendix H to this part. For an explanation of what constitutes closing funds, see § 1026.38(j)(4)(ii). See also comment 38-4 for an explanation of how to disclose a principal reduction that is not paid from closing funds.

* * * * *

38(k) Summary of seller's transaction.

1. *Transactions with no seller or simultaneous subordinate financing transactions*. Section 1026.38(k) does not apply in a transaction where there is no seller, such as a refinance transaction or a transaction with a construction purpose as defined in § 1026.37(a)(9)(iii), or in a simultaneous subordinate financing purchase transaction as defined in § 1026.37(a)(9)(i) if the first-lien Closing Disclosure records the entirety of the seller's transaction.

* * * * *

38(k)(1) Itemization of amounts due to seller.

1. *Simultaneous subordinate financing*. Section 1026.38(k) does not apply in a simultaneous subordinate financing purchase transaction as defined in § 1026.37(a)(9)(i) if the first-lien Closing Disclosure records the entirety of the seller's transaction. If § 1026.38(k) applies to a simultaneous subordinate financing transaction, § 1026.38(k) is completed based

only on the terms and conditions of the simultaneous subordinate financing transaction and no contract sales price is disclosed under § 1026.38(k)(1)(ii) on the Closing Disclosure for the simultaneous subordinate financing.

38(k)(2) Itemization of amounts due from seller.

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Paragraph 38(k)(2)(vii).

1. *Simultaneous subordinate financing—seller contribution*. If a simultaneous subordinate financing transaction is disclosed with the alternative tables pursuant to § 1026.38(d)(2) and (e), the first-lien Closing Disclosure must include any contributions from the seller toward the simultaneous subordinate financing that are disclosed in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) on the simultaneous subordinate financing Closing Disclosure. For example, assume the simultaneous subordinate financing transaction is disclosed using the alternative tables pursuant to § 1026.38(d)(2) and (e) and the seller contributes $200.00 toward the closing costs of the simultaneous subordinate financing. The simultaneous subordinate financing Closing Disclosure must include the $200.00 contribution in the payoffs and payments table pursuant to § 1026.38(t)(5)(vii)(B) and comments 38(t)(5)(vii)(B)-1 and -2. The first-lien Closing Disclosure must include the $200.00 contribution in the summaries of transactions table for the seller's transaction under § 1026.38(k)(2)(vii).

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38(l) Loan disclosures.

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38(l)(7) Escrow account.

1. *Definition of escrow account.* For a description of an escrow account for purposes of

the escrow account disclosure under § 1026.38(l)(7), see the definition of "escrow account" in 12 CFR 1024.17(b).

2. *Addenda*. Additional pages may be attached to the Closing Disclosure to add lines, as necessary, to accommodate the complete listing of all items required to be shown on the Closing Disclosure under § 1026.38(l)(7). *See* § 1026.38(t)(5)(ix). A reference such as "See attached page for additional information" must be placed in the applicable section of the Closing Disclosure, if an additional page is used to list all items required to be shown.

Paragraph 38(l)(7)(i)(A)(2).

1. *Estimated costs not paid by escrow account funds*. Section 1026.38(l)(7)(i)(A)(*2*) requires the creditor to estimate the amount the consumer is likely to pay during the first year after consummation for the mortgage-related obligations described in § 1026.43(b)(8) that are known to the creditor and that will not be paid using escrow account funds. The creditor discloses this amount only if an escrow account will be established.

2. *During the first year*. Section 1026.38(l)(7)(i)(A)(*2*) requires disclosure based on payments during the first year after consummation. Alternatively, if the creditor elects to make the disclosures required by § 1026.38(l)(7)(i)(A)(*1*) and (l)(7)(i)(A)(*4*) based on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17, then the creditor may make the disclosures required by § 1026.38(l)(7)(i)(A)(*2*) based on a 12-month period beginning with the borrower's initial payment date (rather than beginning with consummation). *See* comment 38(l)(7)(i)(A)(*5*)-1.

Paragraph 38(l)(7)(i)(A)(4).

1. *Estimated costs paid using escrow account funds*. The amount the consumer will be required to pay into an escrow account with each periodic payment during the first year after

consummation disclosed under § 1026.38(l)(7)(i)(A)(*4*) is equal to the sum of the amount of estimated escrow payments disclosed under § 1026.38(c)(1) (as described in § 1026.37(c)(2)(iii)) and the amount the consumer will be required to pay into an escrow account to pay some or all of the mortgage insurance premiums disclosed under § 1026.38(c)(1) (as described in § 1026.37(c)(2)(ii)).

Paragraph 38(l)(7)(i)(A)(5).

1. *During the first year*. Section 1026.38(l)(7)(i)(A)(*4*) requires disclosure of the amount the consumer will be required to pay into the escrow account with each periodic payment during the first year after consummation. Section 1026.38(l)(7)(i)(A)(*1*) requires a disclosure, labeled "Escrowed Property Costs over Year 1," calculated as the amount disclosed under § 1026.38(l)(7)(i)(A)(*4*) multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation. For example, creditors may base such disclosures on less than 12 payments if, based on the payment schedule dictated by the legal obligation, fewer than 12 periodic payments will be made to the escrow account during the first year after consummation. Alternatively, § 1026.38(l)(7)(i)(A)(*5*) permits the creditor to base the disclosures required by § 1026.38(l)(7)(i)(A)(*1*) and (*4*) on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17, even if those disclosures differ from what would otherwise be disclosed under § 1026.38(l)(7)(i)(A)(*1*) and (*4*)—as, for example, when there are fewer than 12 periodic payments scheduled to be made to the escrow account during the first year after consummation.

Paragraph 38(l)(7)(i)(B)(1).

1. *Estimated costs paid directly by the consumer*. The creditor discloses an amount under § 1026.38(l)(7)(i)(B)(*1*) only if no escrow account will be established.

2. *During the first year*. Section 1026.38(l)(7)(i)(B)(*1*) requires disclosure based on payments during the first year after consummation. A creditor may comply with this requirement by basing the disclosure on a 12-month period beginning with the borrower's initial payment date or on a 12-month period beginning with consummation.

* * * * *

38(o) Loan calculations.

1. *Examples.* Section 1026.38(o)(1) and (2) sets forth the accuracy requirements for the total of payments and the finance charge, respectively. The following examples illustrate the interaction of these provisions:

i. Assume that loan costs that are designated borrower-paid at or before closing and that are part of the finance charge (see § 1026.4 for calculation of the finance charge) are understated by more than $100. For example, assume that borrower-paid loan origination fees (see § 1026.4(a)) are cumulatively understated by $150, resulting in the amounts disclosed as the total of payments and the finance charge both being understated by more than $100. Both the disclosed total of payments and the disclosed finance charge would not be accurate for purposes of § 1026.38(o)(1) and (2), respectively.

ii. Assume that loan costs that are designated borrower-paid at or before closing and that are not part of the finance charge are understated by more than $100. For example, assume that borrower-paid property appraisal and inspection fees that are excluded from the finance charge under § 1026.4(c)(7)(iv) are cumulatively understated by $150, resulting in the amount disclosed as the total of payments being understated by more than $100. The disclosed total of payments would not be accurate for purposes of § 1026.38(o)(1), but the disclosed finance charge would be accurate for purposes of § 1026.38(o)(2).

38(o)(1) Total of payments.

1. *Calculation of total of payments.* The total of payments is the total, expressed as a dollar amount, the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled, through the end of the loan term. The total of payments excludes charges that would otherwise be included as components of the total of payments if such charges are designated on the Closing Disclosure as paid by seller or paid by others. A seller or other party, such as the creditor, may agree to offset payments of principal, interest, mortgage insurance, or loan costs, whether in whole or in part, through a specific credit, for example through a specific seller or lender credit. Because these amounts are not paid by the consumer, they are excluded from the total of payments calculation. Non-specific credits, however, are generalized payments to the consumer that do not pay for a particular fee and therefore do not offset amounts for purposes of the total of payments calculation. For guidance on the amounts included in the total of payments calculation, see the "In 5 Years" disclosure under § 1026.37(l)(1)(i) and comment 37(l)(1)(i)-1. For a discussion of lender credits, see comment 19(e)(3)(i)-5. For a discussion of seller credits, see comment 38(j)(2)(v)-1.

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38(t) Form of disclosures.

* * * * *

38(t)(3) Form.

1. *Non-federally related mortgage loans*. For a transaction that is not a federally related mortgage loan, the creditor is not required to use form H-25 of appendix H to this part, although its use as a model form for such transactions, if properly completed with accurate content, constitutes compliance with the clear and conspicuous and segregation requirements of

§ 1026.38(t)(1)(i). Even when the creditor elects not to use the model form, § 1026.38(t)(1)(ii) requires that the disclosures contain only the information required by § 1026.38(a) through (s), and that the creditor make the disclosures in the same order as they occur in form H-25, use the same headings, labels, and similar designations as used in the form (many of which also are expressly required by § 1026.38(a) through (s)), and position the disclosures relative to those designations in the same manner as shown in the form. In order to be in a format substantially similar to form H-25, the disclosures required by § 1026.38 must be provided on letter size (8.5" x 11") paper.

* * * * *

38(t)(5) Exceptions.

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38(t)(5)(v) Separation of consumer and seller information.

1. *Permissible form modifications to separate consumer and seller information*. The modifications to the form permitted by § 1026.38(t)(5)(v) may be made by the creditor in any one of the following ways:

i. Leave the applicable disclosure blank concerning the seller or consumer on the form provided to the other party;

ii. Omit the table or label, as applicable, for the disclosure concerning the seller or consumer on the form provided to the other party; or

iii. Provide to the seller, or assist the settlement agent in providing to the seller, a modified version of the form under § 1026.38(t)(5)(vi), as illustrated by form H-25(I) of appendix H to this part.

2. *Provision of separate disclosure to consumer*. If applicable State law prohibits sharing with the consumer the information disclosed under § 1026.38(k), a creditor may provide a separate form to the consumer. A creditor may also provide a separate form to the consumer in any other situation where the creditor in its discretion chooses to do so, such as based on the seller's request. For the permissible form modifications to separate consumer and seller information, see comment 38(t)(5)(v)-1.

3. *Provision of separate disclosure to seller*. To separate the information of the consumer and seller under § 1026.38(t)(5)(v), a creditor may assist the settlement agent in providing (or provide when acting as a settlement agent) a separate form to the seller where applicable State law prohibits sharing with the seller the information disclosed under § 1026.38(a)(2), (a)(4)(iii), (a)(5), (b) through (d), (f), or (g), with respect to closing costs paid by the consumer, or § 1026.38(i), (j), (l) through (p), or (r), with respect to closing costs paid by the creditor and mortgage broker. A creditor may also assist the settlement agent in providing (or provide when acting as a settlement agent) a separate form to the seller in any other situation where the creditor in its discretion chooses to do so, such as based on the consumer's request. For the permissible form modifications to separate consumer and seller information, see comment 38(t)(5)(v)-1.

38(t)(5)(vi) Modified version of the form for a seller or third-party.

1. For permissible form modifications to separate consumer and seller information, see comment 38(t)(5)(v)-1.

38(t)(5)(vii) Transaction without a seller or simultaneous subordinate financing transaction.

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2. *Appraised property value*. The modifications permitted by § 1026.38(t)(5)(vii) do not

specifically refer to the label required by § 1026.38(a)(3)(vii)(B) for transactions that do not involve a seller, because the label is required by that section and therefore is not a modification. As required by § 1026.38(a)(3)(vii)(B), a form used for a transaction that does not involve a seller and is modified under § 1026.38(t)(5)(vii) must contain the label "Appraised Prop. Value" or "Estimated Prop. Value" where there is no appraisal.

Paragraph 38(t)(5)(vii)(B).

1. *Amounts paid by third parties*. Under § 1026.38(t)(5)(vii)(B), the payoffs and payments table itemizes the amounts of payments made at closing to other parties from the credit extended to the consumer or funds provided by the consumer, including designees of the consumer. Designees of the consumer for purposes of § 1026.38(t)(5)(vii)(B) include third parties who provide funds on behalf of the consumer. Such amounts may be disclosed as credits in the payoffs and payments table. Some examples of amounts paid by third parties that may be disclosed as credits on the payoffs and payments table under § 1026.38(t)(5)(vii)(B) include gift funds, grants, proceeds from loans that satisfy the partial exemption criteria in § 1026.3(h), and, on the Closing Disclosure for a simultaneous subordinate financing transaction, contributions from a seller for costs associated with the subordinate financing.

2. *Disclosure of subordinate financing*. i. *First-lien Closing Disclosure*. On the Closing Disclosure for a first-lien transaction disclosed with the alternative tables pursuant to § 1026.38(d)(2) and (e), such as a refinance transaction, that also has simultaneous subordinate financing, the proceeds of the subordinate financing are included in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) by disclosing, as a credit, the principal amount of the subordinate financing, and, if the net proceeds of the subordinate financing are less than the principal amount of the subordinate financing, the net proceeds. The creditor may list the

principal amount and net proceeds of the subordinate financing on the same line. For example, the creditor may disclose the principal amount of the subordinate financing under the subheading "To" with a description of the payment, and the net proceeds of the subordinate financing under the subheading "Amount."

ii. *Simultaneous subordinate financing Closing Disclosure*. On the Closing Disclosure for a simultaneous subordinate financing transaction disclosed with the alternative tables pursuant to § 1026.38(d)(2) and (e), the proceeds of the subordinate financing applied to the first-lien transaction may be included in the payoffs and payments table under § 1026.38(t)(5)(vii)(B).

iii. *Simultaneous subordinate financing—seller contribution*. If a creditor discloses the alternative tables pursuant to § 1026.38(d)(2) and (e) on the simultaneous subordinate financing Closing Disclosure, the creditor must also disclose as a credit in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure, any contributions from the seller toward the simultaneous subordinate financing. For example, assume the subordinate-lien creditor provides the alternative tables pursuant to § 1026.38(d)(2) and (e) on the simultaneous subordinate financing Closing Disclosure and the seller contributes $200.00 toward the closing costs of the simultaneous subordinate financing. The subordinate-lien creditor must disclose the $200.00 contribution as a credit on the simultaneous subordinate financing Closing Disclosure in the payoffs and payments table under § 1026.38(t)(5)(vii)(B). See also comments 38(j)-3 and 38(k)(2)(vii)-1 for disclosure requirements applicable to the first-lien transaction when the alternative disclosures are used for a simultaneous subordinate financing transaction and a seller contributes to the costs of the subordinate financing.

3. *Other examples*. For additional examples of items disclosed under § 1026.38(t)(5)(vii)(B), see comment 37(h)(2)(iii)-1. See also comment 38-4 for an explanation of how to disclose a principal reduction under § 1026.38(t)(5)(vii)(B).

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Appendix D—Multiple-Advance Construction Loans

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7. *Relation to §§ 1026.37 and 1026.38.* Creditors may use, at their option, the following methods to estimate and disclose the terms of multiple-advance construction loans pursuant to §§ 1026.37 and 1026.38. As stated in comment app. D-1, appendix D may also be used in multiple-advance transactions other than construction loans, when the amounts or timing of advances is unknown at consummation.

i. *Loan term.* A. *Disclosure as single transaction.* If the construction and permanent financing are disclosed as a single transaction, the loan term disclosed is the total combined term of the construction period and the permanent period. For example, if the term of the construction financing is 12 months and the term of the permanent financing is 30 years, and the two phases are disclosed as a single transaction, the loan term disclosed is 31 years.

B. *Term of permanent financing*. The loan term of the permanent financing is counted from the date that interest for the permanent financing periodic payments begins to accrue, regardless of when the permanent phase is disclosed.

ii. *Product.* A. *Separate construction loan disclosure.* If the construction financing is disclosed separately and has payments of interest only, the time period of the "Interest Only" feature that is disclosed as part of the product disclosure under §§ 1026.37(a)(10) and 1026.38(a)(5)(iii) is the period during which interest-only payments are actually made and

excludes any final balloon payment of principal and interest. For example, the product disclosure for a fixed rate, interest-only construction loan with a term of 12 months in which there will be 11 monthly interest payments and a final balloon payment of principal and interest is "11 mo. Interest Only, Fixed Rate."

B. *Combined construction-permanent disclosure*. If a single, combined construction-permanent disclosure is provided, the time period of the "Interest Only" feature that is disclosed as part of the product disclosure under §§ 1026.37(a)(10) and 1026.38(a)(5)(iii) is the full term of the interest-only construction financing plus any interest-only period for the permanent financing. For example, the product disclosure for a single disclosure, fixed rate, construction-permanent loan with a 12 month interest-only construction phase where the interest rate is not subject to modification upon conversion to the permanent phase is "1 Year Interest Only, Fixed Rate." If the first year of the permanent phase in this example also has a 12 month interest-only period, the product disclosure is "2 Year Interest Only, Fixed Rate."

C. *Product when interest rate at consummation not known*. If the interest rate for the permanent phase is not known at consummation for a construction-permanent loan using a single, combined construction-permanent disclosure or using separate disclosures for the permanent phase, the creditor shall disclose the loan product under §§ 1026.37(a)(10) and 1026.38(a)(5)(iii) as "Adjustable Rate." If the interest rate may increase under the terms of the legal obligation from the disclosures provided at consummation, the loan product description is "Adjustable Rate" in such cases, even if the interest rate will be fixed for the term of the permanent phase once it is set.

iii. *Interest rate*. If the permanent financing has an adjustable rate at consummation and separate disclosures are provided, the rate disclosed for the permanent financing is the fully-

indexed rate pursuant to § 1026.37(b)(2) and its commentary. If the permanent financing has a fixed rate that will not be adjusted when the construction phase converts to the permanent phase, that fixed rate is used for disclosure purposes. If the permanent financing has a rate that may adjust when the construction phase converts to the permanent phase, the permanent financing has an adjustable rate. If the legal obligation for a loan secured by the consumer's principal dwelling provides that the permanent financing interest rate may adjust when the construction financing converts to permanent financing, and such adjustment to the interest rate results in a corresponding adjustment to the payment, the creditor provides the disclosures pursuant to § 1026.20(c), but not (d), if the interest rate for the permanent phase will be fixed after the conversion.

iv. *Increase in periodic payment.* If the amounts or timing of advances is unknown at or before consummation and the appendix D assumption that applies if interest is payable only on the amount advanced for the time it is outstanding is used to calculate the periodic payment:

A. A creditor discloses "YES" as the answer to "Can this amount increase after closing?" pursuant to § 1026.37(b)(6)(iii) whether the creditor provides separate construction disclosures or combined construction-permanent disclosures, even though calculation of the construction financing periodic payments using the assumptions in appendix D produces interest-only periodic payments that are equal in amount.

B. A creditor that discloses "YES" as the answer to "Can this amount increase after closing?" pursuant to § 1026.37(b)(6)(iii) may use months or years for the § 1026.37(b)(6)(iii) disclosures, consistent with comment 37(b)(6)-1. For example, for a 10-month construction loan, the first § 1026.37(b)(6)(iii) disclosure bullet may disclose, "Adjusts every mo. starting in mo. 1" and the second § 1026.37(b)(6)(iii) disclosure bullet may disclose, "Can go as high as

$[insert maximum possible periodic principal and interest payment] in year 1". The calculation of the maximum possible periodic principal and interest payment disclosed is based on the maximum principal balance that could be outstanding during the construction phase. As part of the "First Change/Amount" disclosure in the "Adjustable Payment (AP) Table" pursuant to § 1026.37(i)(5)(i), the creditor may omit and leave blank the amount or range corresponding to the first periodic principal and interest payment that may change. In such cases, the creditor must still disclose the timing of the first change, which is the number of the earliest possible payment (*e.g.*, 1st payment) that may change under the terms of the legal obligation.

C. When separate construction disclosures or the combined construction-permanent disclosures are provided for adjustable-rate construction financing, a creditor provides the § 1026.37(b)(6)(iii) disclosures reflecting changes that are due to changes in the interest rate and changes that are due to changes in the total amount advanced. Such a creditor discloses "YES" as the answer to "Can this amount increase after closing?" pursuant to § 1026.37(b)(6), because the initial periodic payment may increase based upon an increase in the interest rate in addition to a change based on the total amount advanced. Such a creditor also discloses a reference to the adjustable payment table required by § 1026.37(i), disclosed as provided in comment app. D-7.iv.B, because that disclosure reflects both a change due to a change in the total amount advanced, which is a change to the periodic principal and interest payment that is not based on an adjustment to the interest rate, as well as the fact that there are interest-only payments. Such a creditor also includes a reference to the adjustable interest rate table required by § 1026.37(j) because that disclosure reflects a change due to a change in the interest rate.

v. *Projected payments table*. A creditor must disclose a projected payments table for certain transactions secured by real property or a cooperative unit, pursuant to §§ 1026.37(c) and

1026.38(c), instead of the general payment schedule required by § 1026.18(g) or the interest rate and payments summary table required by § 1026.18(s). Accordingly, some home construction loans that are secured by real property or a cooperative unit are subject to §§ 1026.37(c) and 1026.38(c) and not § 1026.18(g). See comment app. D-6 for a discussion of transactions that are subject to § 1026.18(s). Under § 1026.17(c)(6)(ii), when a multiple-advance construction loan may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction. The following are illustrations of the application of appendix D to transactions subject to §§ 1026.37(c) and 1026.38(c), under each of the § 1026.17(c)(6)(ii) alternatives:

A. If a creditor uses appendix D and elects pursuant to § 1026.17(c)(6)(ii) to disclose the construction and permanent phases as separate transactions, the construction phase must be disclosed according to the rules in §§ 1026.37(c) and 1026.38(c). Under §§ 1026.37(c) and 1026.38(c), the creditor must disclose the periodic payments during the construction phase in a projected payments table. The provision in appendix D, part I.A.3, which allows the creditor to omit the number and amounts of any interest payments "in disclosing the payment schedule under § 1026.18(g)" does not apply because the transaction is governed by §§ 1026.37(c) and 1026.38(c) rather than § 1026.18(g). If interest is payable only on the amount actually advanced for the time it is outstanding, the creditor determines the amount of the interest-only payment to be made during the construction phase using the assumptions in appendix D, part I.A.1. Also, because the construction phase is being disclosed as a separate transaction and its periodic payments do not repay the principal, the creditor must disclose the construction phase transaction as a product with a balloon payment feature, pursuant to §§ 1026.37(a)(10)(ii)(D) and 1026.38(a)(5)(iii), unless the transaction has negative amortization, interest-only, or step

payment features, consistent with the requirement at § 1026.37(a)(10)(iii). In addition, the creditor must provide the balloon payment disclosures pursuant to §§ 1026.37(b)(5), 1026.37(b)(7)(ii), and 1026.38(b) and disclose the balloon payment in the projected payments table.

B. If the creditor elects to disclose the construction and permanent phases as a single transaction, the repayment schedule must be disclosed pursuant to appendix D, part II.C.2. Under appendix D, part II.C.2, the projected payments table reflects the interest-only payments during the construction phase in a first column. The first column also reflects the amortizing payments, and mortgage insurance and escrow payments, if any, for the permanent phase if the term of the construction phase is not a full year. The following column(s) reflect the payments for the permanent phase. If interest is payable only on the amount actually advanced for the time it is outstanding, the creditor determines the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part II.A.1.

C. Consistent with comments 37(c)(2)(ii)-1 and 37(c)(2)(iii)-1, when the loan is disclosed as one transaction and only the terms of the legal obligation for the permanent phase require mortgage insurance or escrow, the way the creditor discloses the escrow and mortgage insurance depends on whether the first column of the projected payments table exclusively discloses the construction phase. If the first column of the projected payments table exclusively discloses the construction phase, the creditor discloses “0” in the first column of the projected payments table for mortgage insurance and a hyphen or dash in the first column of the projected payments table for escrow. If the first column discloses both the construction phase and the permanent phase payments, the amount of the mortgage insurance premium or escrow payment (if any) for the permanent phase is disclosed in the first column.

vi. *Disclosure of construction costs*. A. Construction costs are the costs of improvements to be made to the property that the consumer contracts for in connection with the financing transaction and that will be paid in whole or in part with loan proceeds.

B. On the Loan Estimate, a creditor factors construction costs into the funds for borrower calculation under § 1026.37(h)(1)(v). Because these amounts are disclosed under § 1026.38(j)(1)(v) on the Closing Disclosure, they are included in existing debt that is factored into the funds for borrower calculation under §°1026.37(h)(1)(v). Comment 37(h)(1)(v)-2 explains that the total amount of all existing debt being satisfied in the transaction that is used in the funds for borrower calculation is the sum of the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v), as applicable. For transactions without a seller or for simultaneous subordinate financing, construction costs may instead be disclosed under § 1026.37(h)(2)(iii) in the optional alternative calculating cash to close table.

C. A creditor discloses the amount of construction costs on the Closing Disclosure under § 1026.38(j)(1)(v) in the summaries of transactions table and factors them into the down payment/funds from borrower and funds for borrower calculation under § 1026.38(i)(4) and (6). For transactions without a seller or for simultaneous subordinate financing, construction costs may instead be disclosed under § 1026.38(t)(5)(vii)(B) in the optional alternative calculating cash to close table.

D. A creditor in some cases places a portion of a construction loan's proceeds in a reserve or other account at consummation. The amount of such an account, at the creditor's option, may be disclosed separately from other construction costs under § 1026.38(j)(1)(v) if space permits, or may be included in the amount disclosed for construction costs under

§ 1026.38(j)(1)(v). If the creditor chooses to disclose separately the amount of loan proceeds placed in a reserve or other account at consummation, the creditor may disclose the amount as a separate itemized cost, along with an itemized cost for the balance of the construction costs, in accordance with the disclosure and calculation options described in comments app. D-7.vi-B and C. The amount may be labeled with any accurate term, so long as any label the creditor uses is in accordance with the "clear and conspicuous" standard explained at comment 37(f)(5)-1. If the amount placed in an account is disclosed separately, the balance of construction costs disclosed excludes the amount placed in an account to avoid double counting.

vii. *Construction loan inspection and handling fees.* Comment 4(a)-1.ii.A provides that inspection and handling fees, including draw fees, for the staged disbursement of construction loan proceeds are part of the finance charge. Comment 37(f)-3 states that such inspection and handling fees are loan costs associated with the transaction for purposes of § 1026.37(f) and, as such, must be disclosed accurately as part of the Loan Estimate. These fees must also be disclosed accurately as part of the Closing Disclosure. Comment 38(f)-2 refers to explanations under comments 37(f)-3 and 37(f)(6)-3 for making these disclosures. Comment 37(f)-3 explains that, if such fees are collected at or before consummation, they are disclosed in the loan costs table. If such fees will be collected after consummation, they are disclosed in a separate addendum and are not counted for purposes of the calculating cash to close table. Comment 37(f)(6)-3 explains how to disclose inspection and handling fees that will be collected after consummation in an addendum. Under comment 38(f)-2, the same explanation applies to an addendum used for disclosing such fees in the Closing Disclosure. Comment 37(l)(1)-1 explains that the amount disclosed under § 1026.37(l)(1)(i) is the sum of principal, interest, mortgage

insurance, and loan costs scheduled to be paid through the end of the 60th month after the due date of the first periodic payment, and that loan costs are those costs disclosed under § 1026.37(f). Construction loan inspection and handling fees are loan costs that must be included in the sum of the "In 5 Years" disclosure under § 1026.37(l)(1) and the "Total of Payments" disclosure under § 1026.38(o)(1) because they are disclosed under § 1026.37(f), even when they are disclosed on an addendum.

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Dated: July 6, 2017.

Richard Cordray,

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[FR Doc. 2017-15764 Filed: 8/10/2017 8:45 am; Publication Date: 8/11/2017]